

Leon County Circuit Court

November 27, 2000

Al Gore Complaint to Contest Election in Palm Beach, Miami-Dade, and Nassau Counties

November 27, 2000

Al Gore Motion to Count the Ballots from Miami-Dade County

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December 9, 2000

Transcript of Hearing on Motions

November 27, 2000

**Al Gore Complaint to Contest Election in Palm Beach, Miami-Dade,
and Nassau Counties**

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for Vice President of the United States,

Plaintiffs,

v.

CASE NO.: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, and SECRETARY
OF AGRICULTURE BOB CRAWFORD, SECRETARY
OF STATE KATHERINE HARRIS AND L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF
ELECTIONS, individually and as members of and as
THE FLORIDA ELECTIONS
CANVASSING COMMISSION,

and

THE MIAMI-DADE COUNTY CANVASSING
BOARD, LAWRENCE D. KING, MYRIAM
LEHR and DAVID C. LEAHY as
members of and as THE MIAMI-DADE COUNTY
CANVASSING BOARD, and DAVID C. LEAHY,
individually and as Supervisor of Elections,

and

THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING,
AND DAVID HOWARD (or, in the alternative,
MARIANNE P. MARSHALL), as
members of and as the NASSAU COUNTY
CANVASSING BOARD, and SHIRLEY N. KING,
individually and as Supervisor of Elections,

and

THE PALM BEACH COUNTY CANVASSING BOARD,
THERESA LEPORE, CHARLES E. BURTON
AND CAROL ROBERTS, as members
of and as the PALM BEACH COUNTY CANVASSING BOARD,
and THERESA LEPORE, individually and as Supervisor
of Elections,

and

GEORGE W. BUSH, Nominee of
the Republican Party of the United States
for President of the United States and
RICHARD CHENEY, Nominee of the
Republican Party of the United States for
Vice President of the United States,

Defendants.

COMPLAINT TO CONTEST ELECTION

1. This is an action to contest the certification that George W. Bush and Richard Cheney received more votes in the Presidential election in the State of Florida than Al Gore and Joe Lieberman. The vote totals reported in the Election Canvassing Commission's certification of November 26, 2000 are wrong. They include illegal votes and do not include legal votes that were improperly rejected. The number of such votes is more than sufficient to place in doubt, indeed to change, the result of the election.

2. The Plaintiffs, Albert Gore, Jr., nominee of the Democratic Party of the United States for President of the United States in the 2000 General Election (Al Gore) and Joseph I. Lieberman nominee of the Democratic Party of the United States for Vice-President of the United

States in the 2000 General Election (Joe Lieberman), contest the November 26, 2000 certification by the Elections Canvassing Commission of the results of the Presidential election and the determination of the winning Presidential Electors in Florida. Al Gore and Joe Lieberman further contest the Secretary of State's certification of the electors for Defendants George W. Bush and Richard Cheney as elected.

3. The Election Canvassing Board certified 2,912,790 votes for George W. Bush and Richard Cheney and 2,912,253 votes for Al Gore and Joe Lieberman, a difference of 537 votes. That difference was entirely the result of:

(a) rejecting the results of the complete manual count in Palm Beach County (which resulted in approximately 215 additional net votes for Gore/Lieberman) and the results of a manual count of approximately 20% of the precincts in Miami-Dade County (which resulted in approximately 160 additional net votes for Gore/Lieberman); and

(b) including changes to the certified results of the Nassau County Canvassing Board which, over the Thanksgiving weekend, changed its previously certified results -- not based on a manual count, but by adding votes in violation of Florida law from earlier tabulations that had previously been rejected by that Board as illegal (which resulted in a total of approximately 50 additional net votes for Bush/Cheney).

(c) not counting approximately 4,000 ballots in Palm Beach County that were marked by the voter with an indentation but which were not (in most cases at least) punctured that the Palm Beach Canvassing Board reviewed but did not count

as a vote for any presidential candidate and which have been contested. If discernable indentations on such ballots were counted as votes, Al Gore and Joe Lieberman would receive more than 800 net additional votes.

(d) not counting approximately 9,000 ballots in Miami-Dade County that have not been recorded as a vote for any presidential candidate and which were never counted manually because the Miami-Dade County Canvassing Board prematurely ceased its manual count with only approximately 20% of the precincts counted. If these approximately 9,000 uncounted ballots result in the same proportional increase in net votes as the ballots that were counted by the Board before it stopped counting, these ballots would result in approximately 600 net additional votes for Gore/Lieberman.

Common Allegations

4. This is an action to contest an election under section 102.168, Florida Statutes (2000).
5. Section 102.1685, Florida Statutes (2000) establishes Leon County as the proper venue for this action.).
6. Section 102.168(8), Florida Statutes (2000) empowers the judge in a contest action to:

fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.
7. Plaintiff Al Gore was the nominee of the Democratic Party for President of the United States and Plaintiff Joe Lieberman was the nominee of the Democratic Party for Vice President of

the United States in the year 2000 general election in the State of Florida. They appeared on the ballot in every county in Florida.

8. George W. Bush was the nominee of the Republican Party for President of the United States and Richard Cheney was the nominee of the Republican Party for Vice President of the United States in the year 2000 general election in the State of Florida. They appeared on the ballot in every county in Florida.

9. Section 102.111, Florida Statutes, (2000) creates the Elections Canvassing Commission and charges it with certifying the returns of elections and determining who has been elected for each office. Katherine Harris serves on the Commission by virtue of her position as Secretary of State. L. Clayton Roberts serves on the Commission by virtue of his position as Director of the Division of Elections. Bob Crawford serves on the Commission as a substitute for Governor Jeb Bush, who has declined to serve because his brother is one of the candidates.

10. On November 7, 2000, the State of Florida conducted a general election for the President of the United States. On November 8, 2000, the Division of Elections for the State of Florida reported that George W. Bush and Richard Cheney, the candidates for the Republican Party, received 2,909,135 votes and that Al Gore and Joe Lieberman, the candidates for the Democratic Party, received 2,907,351 votes.

11. The difference of 1,784 votes between the Republican and Democratic candidates triggered the automatic recount provisions of Section 102.141(4), Florida Statutes (2000), (requiring a recount by county canvassing boards if there is a difference of less than .5%). The recount by all county canvassing boards narrowed the difference between Gore/Lieberman and Bush/Cheney to 300 votes.

12. Section 102.151, Florida Statutes (2000) requires county canvassing boards to issue certificates reporting the total number of votes cast for each person elected and transmit it to the Department of State.

13. Section 102.112, Florida Statutes (2000) requires all county canvassing boards to file vote count returns for the election of a federal office with the Department of State.

14. The Florida Supreme Court directed that all amended certifications resulting from manual counts in this election be filed with the Elections Canvassing Commission by 5:00 p.m. on Sunday, November 26, 2000, and that the Elections Canvassing Commission and the Secretary of State must accept those amended certifications. The Court further ordered that the certificates made and signed by the Elections Canvassing Commission pursuant to section 102.121 certify the amended returns, including the results of recounts and hand counts. *Palm Beach County Canvassing Board v. Harris*, Consolidated Case Number SC00-2346, Slip Op. (Fla. Sup. Ct., Nov. 21, 2000).

15. The Florida Supreme Court ordered that all amended certifications be filed by 5:00 p.m., November 26, 2000 in order to permit election contests pursuant to Section 102.168 to be filed and resolved by the December 12, 2000 deadline for the resolution of contests regarding the selection of electors.

16. On November 26, 2000 the Secretary of State certified the results of the November 7, 2000 Presidential Election.

17. On November 26, 2000 the Elections Canvassing Board declared George W. Bush and Richard Cheney as the winners of Florida's electoral votes.

Count I (Miami-Dade County Canvassing Board)

18. Plaintiffs re-allege paragraphs one through 17.

19. Defendants, Lawrence D. King, Myriam Lehr and David C. Leahy, are and were at all relevant times members of the Miami-Dade County Canvassing Board.

20. Defendant, David C. Leahy, is and was at all relevant times Supervisor of Elections for Miami-Dade County.

21. The Miami-Dade County Democratic Executive Committee exercised its right under section 102.166(4), Florida Statutes (2000) to request that ballots be manually counted.

22. The Miami-Dade County Canvassing Board conducted the sample manual count required by section 102.166, Florida Statutes (2000). The Board determined that the sample manual count revealed an error in the vote tabulation that could affect the outcome of the election. The Board thereafter determined, pursuant to section 102.166(5), Florida Statutes (2000) to manually count all ballots.

23. On November 14, 2000, the Miami-Dade County Canvassing Board wrote the Division of Elections asking that votes resulting from manual counts be included in its certified results. On November 15, 2000 the Secretary of State advised that she refused to accept the votes.

24. The Florida Supreme Court issued three orders in Consolidated Case Numbers SC00-2346, SC00-2348 and SC00-2349 determining that the Secretary of State must accept the results of local canvassing board manual counts certified by the boards.

25. On the morning of November 22 the Miami-Dade Canvassing Board decided, in light of the deadline set by the Supreme Court, to manually count approximately 10,750 ballots with respect to which the machines did not record a vote for President. These ballots are known as "uncounted ballots." As of that time, in two full days of work 96,500 ballots from 139 precincts, approximately 20% of the 635 Miami-Dade precincts, had already been counted. These results

confirmed overwhelmingly that the machines which had read the punch cards had failed to count thousands of citizens' votes for presidential candidates.

26. In addition, hundreds of ballots contained a punch at the number immediately below that of the Gore/Lieberman punch hole in a location that could only evince the voter's intent to cast a ballot for the Gore/Lieberman candidacy.

27. The sample manual count conducted by the Miami-Dade Board identified six net additional votes for Gore/Lieberman. Those votes appear to be included in the totals certified by the Elections Canvassing Commission. Failure to include them would be rejection of lawful votes sufficient to change or place in doubt the outcome of the election.

28. Beginning November 22, Republican and other supporters of George Bush launched a campaign of personal attacks upon Canvassing Board members and election personnel. The November 24, 2000 New York Times reported:

Upstairs in the Clark Center [where votes were being counted], several people were trampled, punched or kicked when protesters tried to rush the doors outside the office of the Miami-Dade supervisor of elections [sic]. Sheriff's deputies restored order. When the ruckus was over, the protesters had what they had wanted: a unanimous vote by the board to call of the hand counting.

29. Some news reports described the protests as a "near riot." The New York Times also reported on November 24, 2000: "One nonpartisan member of the board, David Leahy, the supervisor of elections, said after the vote that the protests were one factor that he had weighed in his decision."

30. Following a lunch break on November 23, and without notice of the intention to consider the issue, the Miami-Dade Canvassing Board announced it would cease all manual counts. The reason asserted for the decision was that it was not possible to complete a full manual count of

all ballots by the 5:00 p.m., Sunday November 26, 2000 deadline for amending certifications. The Canvassing Board also voted to discard the hundreds of additional votes that had already been duly counted up to that moment.

31. Section 102.166(5)(c), Florida Statutes (2000) required the Miami-Dade Canvassing Board to count all ballots in the county, given the results of the counting of the sample precincts. *Miami-Dade County Democratic Party v. Miami-Dade County Canvassing Board*, Slip Op. at 3, Case No. 3D00-3318 (Fla. 3rd DCA, Nov. 22, 2000) at 3. The court held that the Board had a "mandatory obligation" to count manually. *Id.* The Board had no authority to stop the counting until it was completed. Stopping meant that thousands of votes cast for Presidential candidates were not counted.

32. The Miami-Dade results alone show that Al Gore and Joe Lieberman received a number of votes which, when added to the statewide totals previously reported, would be sufficient to change or place in doubt the result of the election.

33. The refusal of the Miami-Dade County Canvassing Board to manually count the uncounted ballots, and the certification of the Elections Canvassing Commission of results that did not include such uncounted ballots, results in the unlawful rejection of legal votes sufficient to change or place in doubt the result of the state-wide election for President.

34. The refusal of the Miami-Dade County Canvassing Board to manually count the uncounted ballots and the certification of the Elections Canvassing Commission of results that did not include such uncounted ballots amounts to misconduct sufficient to change or place in doubt the result of the election.

35. If the uncounted ballots of Miami-Dade County are counted, it will show that a person other than the candidate certified by the Elections Canvassing Commission as the winner of Florida's Presidential election was duly elected.

Count II (Miami-Dade County)

36. Plaintiffs reallege paragraphs 1-17.

37. The partial manual count of ballots conducted by the Miami-Dade County Canvassing Board identified approximately 160 net additional votes for Gore/Lieberman.

38. Failure of the Miami-Dade County Canvassing Board to file amended returns reporting the votes referred to in the immediately preceding paragraph, and the certification by the Elections Canvassing Commission missing such votes, was an unlawful rejection of legal votes sufficient to change or place in doubt the result of the state-wide election.

39. Failure of the Miami-Dade County Canvassing Board to file amended returns reporting the votes for candidates counted in the manual counts, and the certification by the Elections Canvassing Commission missing such votes, is misconduct sufficient to change or place in doubt the result of the election.

Count III (Nassau County)

40. Plaintiffs reallege paragraphs 1-17.

41. Defendants, Robert E. Williams, Shirley N. King, and David Howard were at all relevant times through November 24, 2000, the members of the Nassau County Canvassing Board.

42. Defendant, Shirley N. King, is and was at all relevant times Supervisor of Elections for Nassau County.

43. On the evening of November 7, 2000, the Nassau County Supervisor of Elections informed the Department of State that unofficial returns of the general election for President and Vice President of the United States in Nassau County showed Gore/Lieberman with 6,952 votes and Bush/Cheney with 16,404 votes.

44. On November 8, 2000, the Nassau County Canvassing Board conducted the machine recount of ballots mandated by section 102.141(4), Florida Statutes (2000). The statutorily mandated machine recount produced returns of 6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney, a net gain of 51 votes for Gore/Lieberman.

45. On November 8 or 9, 2000, the Nassau County Canvassing Board certified to the Department of State returns based on the statutorily mandated machine recount, that is, 6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney.

46. On November 24, 2000 Marianne Marshall, a Nassau County Commissioner, served as a substitute Board member in place of David Howard. Marianne Marshall was a candidate with opposition in the November 7, 2000 election.

47. On November 24, 2000, the Nassau County Canvassing Board met without the notice required by section 286.011, Florida Statutes (2000). At that meeting, the Board decided to submit a new certification to the Department of State, reporting the unofficial election night returns (Gore/Lieberman 6,952 votes and Bush/Cheney 16,404 votes) rather than the returns of the statutorily mandated machine recount (6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney). The Board thus changed its certification and certified November 7 results that it had previously certified as incorrect.

48. David Howard, a member of the Board, did not attend the November 24, 2000 meeting. Marianne Marshall did attend it.

49. Section 102141(1), Florida Statutes (2000) sets forth the rules to be followed to select a replacement Board member in the event that a member of the Canvassing Board is unable to serve.

50. Subsections (1)(a), (b), (c), and (d) of Section 102.141, Florida Statutes (2000) all provide that a person who is a candidate who has opposition in the election being canvassed is not eligible to be appointed as a substitute member of the Canvassing Board canvassing that election.

51. The Nassau County Canvassing Board transmitted its new certification to the Department of State on Friday November 24, 2000. This new certification was included in the results certified by the Elections Canvassing Commission.

52. The November 24 certification of the unofficial election night results violated section 102.141(4), Florida Statutes (2000), requiring that a machine recount be conducted where a candidate wins an election by less than 0.5%, and further providing that if there is a discrepancy between the unofficial election night returns and the tabulation undertaken in the statutorily mandated recount, "the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly."

53. The refusal of the Nassau County Canvassing Board to certify returns reporting the votes for candidates identified in the required recount, and the certification by the Elections Canvassing Commission omitting such returns, is the acceptance of a number of illegal votes sufficient to change or place in doubt the result of the election.

54. The refusal of the Nassau County Canvassing Board to certify returns reporting the votes for candidates identified in the required recount, and the certification by the Elections

Canvassing Commission omitting such returns, constitutes misconduct sufficient to change or place in doubt the result of the election.

55. The decision of the Nassau County Canvassing Board to refuse to certify returns including the results of the mandatory recount was unlawful and beyond its authority because Marianne Marshall participated in the decision. The result of this unlawful action is that a person other than the successful candidate has been certified as duly elected.

56. The November 24, 2000 meeting of the Nassau County Canvassing Board violated section 286.011, Florida Statutes (2000). Therefore the actions taken at that meeting, including changing the returns certified are null and void. §286.011(1), Fla. Stat. (2000)

Count IV (Rejection of Palm Beach Manual Count).

57. Plaintiffs reallege paragraphs 1-17.

58. On November 7, 2000, approximately 462,644 voters in Palm Beach County voted in an election at which the first office to be voted for on the ballot was for electors of President and Vice President of the United States.

59. On November 12, 2000, Defendant Palm Beach County Canvassing Board (the "Palm Beach Board") voted to conduct a manual count of all ballots cast in Palm Beach County for President and Vice President in the general election held on November 7, 2000. From November 16 to 26, 2000, the Palm Beach Board conducted this manual count of the presidential votes, under section 102.166(5)(c), Florida Statutes (2000).

60. The manual count resulted in a net gain of approximately 215 votes for Al Gore and Joe Lieberman.

61. The Palm Beach Board sought an extension of the 5:00 p.m. November 26, 2000 deadline for reporting the results of its manual count, both by telephone and in writing. The Secretary of State refused to extend the deadline.

62. On November 26, 2000, before 5:00 p.m., the Defendant certified the portion of the results of its manual count that it had completed before 5:00 p.m. to Secretary of State Harris and the Election Canvassing Commission.

63. As of 5:00 p.m. on November 26, the manual count identified approximately 190 net additional votes for Gore/Lieberman.

64. On November 26, 2000, Secretary Harris and the Commission certified the results of the election, but arbitrarily rejected the results of the manual count from Palm Beach County, instead certifying the result of the earlier machine count in Palm Beach County.

65. The Secretary's and Commission's rejection of the Palm Beach County manual count results violates their duty to certify the true results of the election under section 102.111, Florida Statutes, and more specifically violates section 102.131, Florida Statutes, which provides: "The Elections Canvassing Commission in determining the true vote shall not have authority to look beyond the county returns."

66. The Secretary's and Commission's rejection of the Palm Beach County manual recount results also violates the November 21 order of the Florida Supreme Court, which requires the Secretary and the Commission to accept amended certifications reflecting manual count results that it received before 5:00 p.m., November 26.

Count V (Palm Beach Board Failure to Complete Manual Count)

67. Plaintiffs reallege paragraphs 1 to 17 and 58 to 66.

68. Early on November 12, the Palm Beach Board determined under section 102.166(5), Florida Statutes, that a test manual count that it had just completed indicated an error in the vote tabulation which could affect the outcome of the election of presidential electors. The Board determined that the proper remedy was a manual count of all ballots in the county, under section 102.166(5)(c), Florida Statutes.

69. The Board then delayed conducting the manual count for nearly four full days, in part because it relied on an advisory opinion by the Secretary of State that the Florida Supreme Court has decided was unlawful. Consequently, the Palm Beach Board did not complete its manual count before the 5:00 p.m. November 26 deadline established by the Florida Supreme Court.

70. Of the 637 precincts (and groups of absentee ballots) in Palm Beach County, the Palm Beach Board certified to the Secretary of State the results of only 586 before the 5:00 p.m. November 26 deadline. Consequently, the Board failed to certify to the Secretary of State numerous votes cast for presidential electors, because it was unable to complete its manual count before the 5:00 p.m. deadline.

71. At approximately 7:30 p.m. November 24, 2000, the Palm Beach Board completed its manual count. The complete manual count identified approximately 215 net additional votes for Gore/Lieberman. The Elections Canvassing Commission has not included these votes in the certified totals.

72. The Palm Beach Board's failure to complete its manual count before 5:00 p.m. on November 26 violated section 102.166(5)(c), which requires the Board to "[m]anually recount **all**

ballots" (emphasis supplied), once the Board has made a finding that this was the appropriate remedy under the statute.

73. Failure to include the votes identified in the manual count of the Palm Beach Board in the certified results is the rejection of a number of legal votes sufficient to change or place in doubt the result of the election.

74. Failure to include the votes identified in the manual count of the Palm Beach Board in the certified results is misconduct sufficient to change or place in doubt the result of the election.

Count VI (Palm Beach County Intent Standard)

75. Plaintiffs reallege paragraphs 1 to 17, 58 to 66, and 68 to 74.

76. Voters in Palm Beach County voted using Votomatic-style punch cards. Voters using this system vote by first inserting a punch card with perforated rectangles into a plastic marking unit that contains ballot pages. The voter then inserts a metal stylus into a hole in a template that corresponds to the chosen candidate. When the stylus is fully inserted into the hole, it should -- but does not always -- perforate a small square on the punch card ballot known as a "chad," creating a hole in the punch card ballot.

77. In some instances, however, the stylus only partially perforates the punch card or creates an indentation with no perforation at all.

78. The Votomatic-style marking units used in Palm Beach County in this election dramatically increased the number of partially perforated and indented chads in the first column of many punch cards, the column that was used for presidential votes. This problem resulted from equipment difficulties that included an unusually hard plastic backing underlying the punch

card, the accumulation of dislodged chads on this surface, and punch card perforation and misalignment problems. These equipment difficulties interfered with the proper removal of chads when voters inserted the stylus into their punch card ballots.

79. The electronic tabulating equipment that counts punch card ballots operates by shining light through punched holes in the punch card. If a voter does not completely dislodge a chad, the tabulating equipment often does not count a vote that a voter intended to cast. An "undervote" results when the tabulating equipment does not count a voter's choice, thus effectively disfranchising that voter.

80. Voting equipment failures that prevented voters who intended to vote for a presidential candidate from completely punching the first column of their ballots caused a substantial proportion of the undervotes rejected and not counted by the automatic tabulation machines in Palm Beach County.

81. The Palm Beach Board failed to count numerous votes cast for presidential candidates, because it applied a series of incorrect legal standards. The Palm Beach Board's uncompleted manual count resulted in a total of 8,222 uncounted votes. For example, the Palm Beach Board failed to count numerous votes cast by voters whose ballots contained an incompletely punched or indented chad in the first column. These ballots have been segregated and preserved for judicial review.

82. On November 22, 2000, Judge Jorge LaBarga of Palm Beach County Circuit Court entered an Order making clear that the Palm Beach County Canvassing Board could not apply rigid rules that would result in the rejection of validly marked ballots. Judge LaBarga's Order stated that:

[A]s previously articulated in this Court's order of November 15, 2000, [the canvassing board] cannot have a policy in place of per se exclusion of any ballot; each ballot must be considered in light of the totality of the circumstances. Where the intention of the voter can be fairly and satisfactorily ascertained, that intention should be given effect.

Florida Democratic Party v. Palm Beach County Canvassing Board, CL 00-11078 AB, at 6.

83. Judge LaBarga relied in part upon *Delahunt v. Johnston*, 671 N.E.2d 1241 (Mass. 1996), which held that a "discernible indentation made on or near a chad should be recorded as a vote for the person to whom the chad is assigned."

84. In reviewing the ballots cast in Palm Beach County, the Canvassing Board did not follow the correct legal standard, endorsed by Judge LaBarga, to determine the voter's intent. For example, on information and belief, the Board used a standard that failed to count ballots with indentations or dimples for a presidential candidate unless the ballot also revealed similar indentations, falling short of complete perforations, in other races. Applying this rigid rule did not honor the voters' intent or satisfy the applicable legal standard.

85. Section 101.5614(5), Florida Statutes (2000) governs the counting of Votomatic-style punch card ballots. It provides in relevant part: "No vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board."

Section 101.5614(6), Florida Statutes (2000) provides: "... if it is impossible to determine the elector's choice, the elector's ballot shall not be counted for that office" (emphasis supplied)

86. Section 102.166(7)(b) of the Florida Statutes requires that the Palm Beach Board review ballots in a manual count to determine the voter's intent. Section 102.166(7)(b) provides:

"If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing board for it to determine the voter's intent."

87. The Board's failure to use the correct legal standard for determining voter intent in conducting its manual count has resulted in the rejection of a number of legal votes sufficient to change or place in doubt the result of the election.

88. The Board's failure to use the correct legal standard for determining voter intent in conducting its manual count is misconduct of election officials and members of the canvassing board sufficient to change or place in doubt the result of the election.

Prayer for Relief

WHEREFORE, Plaintiffs pray that the court:

As to Count I (Miami-Dade County Canvassing Board)

A. Order that the Miami-Dade County Canvassing Board and Supervisor of Elections immediately transmit the approximately 10,750 uncounted ballots cast in the year 2000 Presidential election to the Clerk of this Court for safe keeping;

B. Cause the uncounted ballots cast in Miami-Dade County for President and Vice President of the United States to be manually counted by or under the direction of this Court, counting each ballot cast unless it is impossible to determine the intent of the voter, in order to determine the true and accurate returns of the general election for President and Vice President from Miami-Dade County;

C. Order that the Elections Canvassing Commission include in the certified results for Presidential electors all votes counted in the Miami- Dade County election including the results of this court's count.

As to Count II (Miami-Dade County)

A. Order the Elections Canvassing Commission to include in the certified results of the election of Presidential Electors the results of all hand counts conducted by the Miami-Dade County Canvassing Board.

As to Count III (Nassau County Canvassing Board)

A. Order that the Elections Canvassing Commission include in its certification of the results of the election of Presidential Electors 6,879 votes for Gore/Lieberman and 16,289 votes for Bush/Cheney.

As to Count IV, V and VI (Palm Beach County)

A. Order that the Palm Beach County Canvassing Board and Supervisor of Elections immediately transmit the approximately 892 disputed ballots cast in the year 2000 Presidential election, which ballots were segregated at the request of agents for the Democratic Party during the recount of such ballots, to the Clerk of this Court for safe keeping;

B. Cause the approximately 892 disputed ballots cast in Palm Beach County for President and Vice President of the United States to be manually counted by or under the direction of this Court, counting each ballot cast unless it is impossible to determine the intent of the voter, in order to determine the true and accurate returns of the general election for President and Vice President from Palm Beach County;

C. Order that the Elections Canvassing Commission include in the certified results for Presidential electors the results of the court's manual count for Palm Beach County.

As to County VIII (Include All Manual Counts)

A. Order the Elections Canvassing Commission to amend its November 26, 2000 certification of the results of the election of Presidential electors to include the results of all ballots counted in Broward, Miami-Dade, and Palm Beach Counties, by machine or hand, through 7:30 p.m. November 26, 2000 to the extent that they were not included.

Universal Relief

A. Order that the Elections Canvassing Commission amend its November 26, 2000 certification of the votes received by the electors of Al Gore and Joseph Lieberman and George W. Bush and Richard Cheney to report the true and accurate results of the election as determined in this proceeding;

B. Order that Secretary of State Katherine Harris and the Division of Elections are enjoined from declaring the winning presidential electors pursuant to section 103.011, Florida Statutes until this proceeding is completed and all relief ordered has been provided;

C. Order an immediate hearing pursuant to Section 102.168(7) to address the matters raised in this Complaint;

D. Advance this cause upon the court's docket;

E. Schedule a status conference to establish expedited deadlines and procedures for this proceeding;

F. Order counsel for all parties to make the utmost effort to promptly serve each other with all pleadings and documents, to exchange e-mail addresses, and to serve each other with all pleadings, to the extent possible, by e-mail in addition to the other means of service;

G. Order that the Elections Canvassing Commission certify that the true and accurate results of the 2000 Presidential Election in Florida is that the Electors of Al Gore and Joe Lieberman received the majority of votes cast in the election.

H. Order that the Elections Canvassing Commission, Secretary of State and, the Division of Elections certify as elected the presidential electors of Al Gore and Joe Lieberman.

I. And grant such other relief as the court deems right and just.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 29th day of November, 2000 to the following:

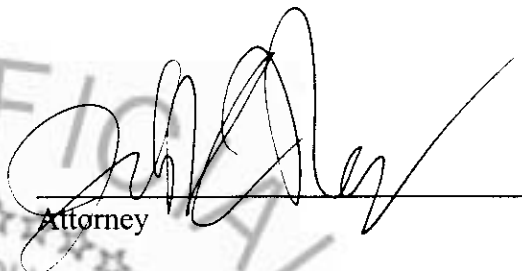
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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for Vice President of the United States,

Plaintiffs,

v.

CASE NO.:

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, and SECRETARY
OF AGRICULTURE BOB CRAWFORD, SECRETARY
OF STATE KATHERINE HARRIS AND L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF
ELECTIONS, individually and as members of and as
THE FLORIDA ELECTIONS
CANVASSING COMMISSION,

and

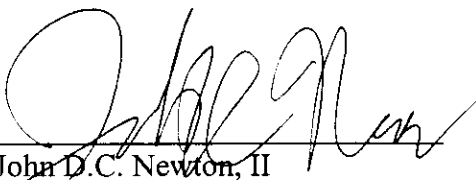
THE MIAMI-DADE COUNTY CANVASSING
BOARD, LAWRENCE D. KING, MYRIAM
LEHR and DAVID C. LEAHY as
members of and as THE MIAMI-DADE COUNTY
CANVASSING BOARD, and DAVID C. LEAHY,
individually and as Supervisor of Elections,

and

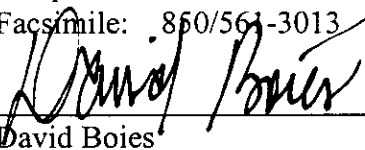
THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING,
AND DAVID HOWARD (or, in the alternative,
MARIANNE P. MARSHALL), as
members of and as the NASSAU COUNTY
CANVASSING BOARD, and SHIRLEY N. KING,
individually and as Supervisor of Elections,

Respectfully submitted this 27th day of November, 2000.

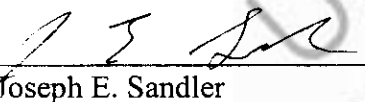
COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



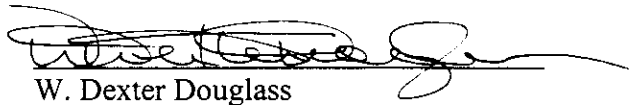
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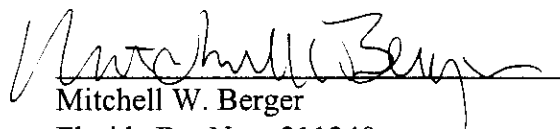
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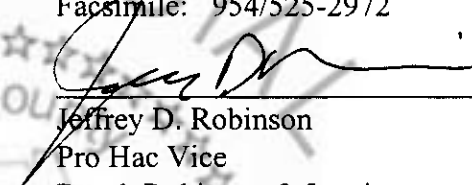
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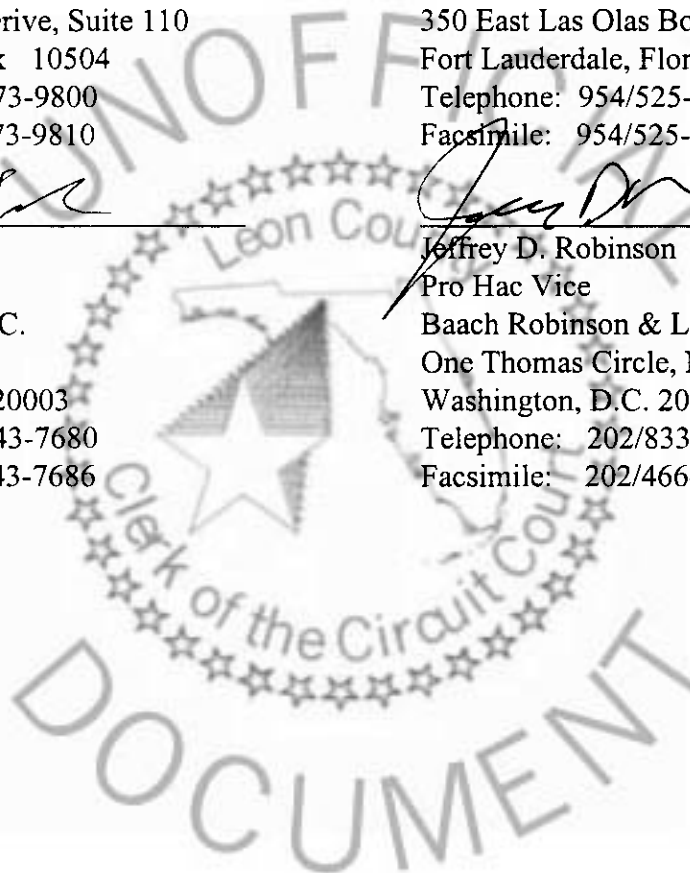
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November 27, 2000

Al Gore Motion to Count the Ballots from Miami-Dade County

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

KATHERINE, HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

CASE NO.:

00-2808

FILED
CLERK
JAN 27 PM 12:15
CIVIL DIVISION
LEON COUNTY FLORIDA

PLAINTIFFS' MOTION TO COUNT THE BALLOTS
FROM MIAMI-DADE COUNTY

Plaintiffs have filed with the Court and served on opposing counsel a Motion to Place Disputed Miami-Dade Ballots in the Registry of the Court and a Motion to Appoint Special Masters for the Limited Function of Immediate Counting of Miami-Dade Ballots to Allow Expedited Disposition of this Matter. Accordingly, Plaintiffs hereby move this Court to Order the Special Master so appointed to count all dispute ballots so delivered by David C. Leahy, Supervisor of Elections for Miami-Dade County within 96 hours of issuance of such order or by 10:00 a.m. on Saturday, December 2, 2000.

1. On November 9, 2000, the Florida Democratic Executive Committee requested a manual count of ballots cast in Miami-Dade County for President and Vice President in the general election held on November 7, 2000. The Defendant County Canvassing Board of Miami-Dade County (the "Board") voted to conduct and commenced a manual count of all ballots pursuant to Section 102.166(5)(c), Fla. Stat. (2000). In the

process, the Board reviewed over 96,500 ballots. That review included 1,794 ballots that had not previously been counted in the presidential election, even though hundreds of those ballots manifested the voter's intent to vote for a presidential candidate. As a result of the failure of machine tabulation equipment to read votes that voters intended to cast, those ballots could not be counted by machine and required a manual counting to validate the vote cast by the elector.

2. On November 22, 2000, the Board, stopped its manual count of ballots cast for the presidential election held on November 7, 2000. At the time it stopped, the Board had tallied a net gain of 157 votes for Vice President Al Gore, the Democratic nominee for President of the United States.

3. On November 22, 2000, the Third District Court of Appeal of Florida found that the Board had previously conducted a "sample" manual recount of ballots from three of its precincts and that the "results of that sample recount showed 'an error in the vote tabulation which could effect the outcome of the election,' thus triggering the Canvassing Board's mandatory obligation to recount all of the ballots in the county." *Miami-Dade Democratic Party v. Miami-Dade Canvassing Board*, Case No. 3D00-3318 (3rd DCA November 22, 2000) (slip opinion).

4. On November 25, 2000, when the Board filed an amended certification with the Election Canvassing Commission, it did not certify the results of a statutorily mandated manual count. Neither did the Board certify the results of its partial manual count (which was suspended on November 22, 2000), even though that partial count yielded a net addition

of 157 votes for Al Gore.¹ On November 26, 2000, Secretary of State Harris certified the results of the election, including the results from Miami-Dade County that did not incorporate any votes counted during the aborted manual count.

5. Plaintiffs filed a complaint in this Court on November 27, 2000, alleging, *inter alia*, that the Board's failure to conduct a full manual recount, or at least a manual recount of the 10,500 uncounted ballots, as required by Florida law, triggered a cause of action under Section 102.168(3)(c), Florida Statutes. That provision states that an election contest action may lie where there has been the rejection of "a number of legally cast votes sufficient to change or place in doubt the outcome of the election."

6. Section 101.5614(5), Fla. Stat. (2000), provides that "[n]o vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board." Last week, the Florida Supreme Court essentially reaffirmed that standard. See *Palm Beach County Canvassing Board, et al. v. Harris, etc., et al.*, SC00-2346, SC00-2348, SC00-2349, at 34-35 ("Our courts have repeatedly held that, where the intention of the voter can be ascertained with reasonable certainty from his ballot, that intention will be given effect even though the ballot is not strictly in conformity with the law. ... These voters should not be disenfranchised where their intent may be ascertained with reasonable certainty, simply because the chad they punched did not completely dislodge from the ballot.") (quoting Supreme Court of Illinois in *Pullen v. Milligan*, 561 N.E. 585, 611 (Ill. 1990)).

¹ Somewhat inconsistently, the Board and Secretary Harris did certify the six additional votes for Al Gore that resulted from the statutory sample manual count of 1 percent of the precincts on November 14, 2000.

7. The decision by the Massachusetts Supreme Court in *Delahunt v. Johnston*, 671 N.E.2d 1241 (Mass.1996), is instructive. The Court held that "a discernible indentation made on or near a chad should be recorded as a vote for the person to whom the chad is assigned." *Id.* at 1242. It should be noted that the *Delahunt* court found unpersuasive the contention that voters may have started to express a preference in a candidate, made an impression on a punch card, but pulled the stylus back because they did not want to express a choice on that particular contest. The Court noted, "[t]he large number of ballots with discernible impressions makes such an inference unwarranted, especially in a hotly contested election." *Id.* at 1252 (cited with approval in *Florida Democratic Party v. Palm Beach County Canvassing Board*, CL 00-11078 AB, at n.1.)

8. At the time the Board stopped counting, it had reviewed approximately 96,500 ballots in 139 precincts, approximately 20% of the precincts in Miami-Dade County, resulting in a net gain of approximately 160 votes for Al Gore. If the remaining 9,000 uncounted undervote ballots result in the same proportional increase in net votes as the ballots that were counted by the Board before it stopped counting, these ballots would result in approximately 600 net additional votes for Gore/Lieberman.. Given how close this election is, rejection of those legally cast votes for Al Gore and Joe Lieberman would be sufficient to change or place in doubt the outcome of the election. Section 102.168(3)(c), Fla. Stat. (2000).

9. The Plaintiffs have filed with this Court and served on opposing counsel a Motion to Place Disputed Miami-Dade Ballots in the Registry of the Court and a Motion to Appoint Special Masters. Those motions seek to place all "undervote" ballots – ballots

which result when the machine tabulating equipment does not count a vote for any candidate for an office -- before this Court. There are approximately 10,500 undervote ballots for the presidential election in Miami-Dade County, of which approximately 9,000 have not yet been counted.

10. The number of legal votes for Al Gore and Joe Lieberman rejected by the Board is plainly "sufficient to change or place in doubt the result of the election." To ensure that all legal votes are accepted, in light of the Board's failure to discharge its duties, the 9,000 remaining uncounted "undervotes" should be counted by this Court or an appointed judicial officer to prevent large-scale disenfranchisement.

11. Section 102.168(8), Florida Statutes (2000), empowers the judge in an election contest to "fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked to prevent or correct any alleged wrong"

12. As Plaintiffs have urged in a separate motion, this Court has the authority to appoint a Special Master to obtain an accurate count of ballots cast in the Presidential election in Miami-Dade County and rejected by the Board. In the *Matter of Protest of Election Returns to Circuit Judge by Marlene Duffy Young*, Case No. G96-2984 (Circuit Court, Polk County, Dec. 27, 1996), Circuit Judge Andrew D. Owens, Jr. issued an Order appointing a Special Master to "obtain an accurate vote count of the results" of an election for county commissioner. The Court's Order further stated that "[t]he vote count may begin with the work, deemed by the Special Master to be accurate, that has already been done by the Supervisor of Elections' office on a manual vote count of the election in question."

13. Any effective legal relief will require the remaining undervote ballots themselves, which are the "best evidence" of how the electors voted, to be counted. *State v. Smith*, 144 So. 333, 336 (Fla. 1932). "The right to a correct count of the ballots in an election is a substantial right." *Id.* at 335.

14. Because the parties are striving to complete all legal proceedings before December 12, 2000, so as not to run afoul of 3 U.S.C. §5, Plaintiffs are moving the Court to compel expedited determination of the issue of how many ballots – as revealed by a manual count conducted according to the correct legal standard for determining the intent of the voter -- were in fact cast for Al Gore and Joe Lieberman on November 7, 2000.

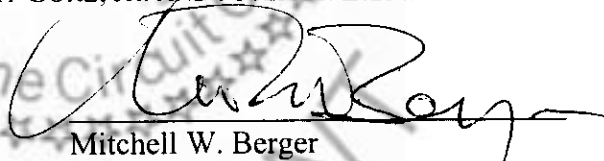
15. Plaintiffs also hereby apply to this Court "for an order to the master[s] to speed the proceedings" and report their relevant vote tallies to the Court "with the least practicable delay." Fla. R. Civ. P. 1.490(f). The work required to complete the vote count in and Miami-Dade County must begin now to ensure that any judicial relief rendered in this proceeding will be timely. The counting of these ballots, already improperly delayed, cannot await the final resolution of the legal issues in this contest if the unique Electoral College deadline imposed by Federal law is to be met. If a completed count of these ballots must await the prior resolution of these legal proceedings, there could very well be insufficient time to carry out this task and vindicate any relief ordered by this Court. Such immediate action is crucial to effectuate the central purposes of allowing election contests, which are "to allow prompt and expeditious determination of the effect of any irregularities" and "to prevent the thwarting of the will of the electors either by fraud or by common mistakes honestly made." *Barber v. Moody*, 229 So. 2d 284, 287 (Fla. 1st DCA 1969), *rev. den.*, 237

So. 2d 753 (Fla. 1970). It also is crucial to avoid any gaming of the courts whereby "one recalcitrant party may successfully delay until a critical date." *Id.*

WHEREFORE, Plaintiffs hereby move this Court to Order the Special Masters appointed by this Court to count all remaining uncounted undervote punchcard ballots not counted by the Miami-Dade County Canvassing Board, and delivered by David C. Leahy, Supervisor of Elections for Miami-Dade County; and further, to conduct such count applying the standard to determine the intent of the voter established by the *Delahunt* case and clarified by this Court as appropriate, in order to ensure that all incompletely punched or indented chads are counted to the extent they clearly demonstrate the intent of the voter, by no later than 96 hours following the issuance of this Court's order or 10:00 a.m. on Saturday, December 2. Nothing in this Motion shall cause delay to any other proceedings. Alternatively, should this Court determine that, at this time, there is not a sufficient basis to proceed with a manual recount of the approximately 9,000 remaining uncounted undervotes, then this Court should appoint a special master to review the uncounted undervotes for discovery purposes and direct such special master to report its findings to this Court.

Respectfully submitted this 22 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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Attorney



Harold McLean, Senior Attorney

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.

Plaintiffs,

v.

CASE NO.:

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

FILED
NOV 27 PM 12:15
LEON COUNTY
FLORIDA

00-2808

**MOTION TO APPOINT SPECIAL MASTER FOR
THE LIMITED FUNCTION OF IMMEDIATE COUNTING OF MIAMI-DADE
BALLOTS TO ALLOW EXPEDITED DISPOSITION OF THIS MATTER**

Plaintiffs move, pursuant to Fla. R. Civ. P. 1.490, for the appointment of Special Master or Masters to perform the limited function of immediately counting disputed votes in Miami-Dade County, as discussed further below. The appointment of such Special Master is necessary to expedite the Court's disposition of this matter, as must be done in order to complete the legal process for determining the outcome of the Presidential election in Florida in time to certify Florida's electors to the Electoral College on December 12, 2000. *See* 3 U.S.C. § 5. This matter is urgent, and of grave importance, since this proceeding clearly will determine which candidate will rightfully serve as the next President of the United States. As grounds in support of this motion, Plaintiffs allege:

1. Rule 1.490(b) authorizes this Court to “appoint members of The Florida Bar as special masters for any particular service required by the court,” or persons other than members of the Bar when it is deemed “advisable” to do so.

2. The “particular service” required in this matter is that Special Masters be appointed to perform the limited function of counting disputed votes in specifically contested counties.

3. The Court has authority to appoint Special Masters for such limited factual purposes, with or without consent of the parties, where “the performance of a particular service” is “necessary to aid the Court in an expeditious disposition of the cause.” *Powell v. Weger*, 97 So. 2d 617, 619 (Fla. 1957); *see also Conner v. McNew*, 237 So. 2d 190, 190-91 (Fla. 3d DCA 1970) (same). *See generally Slatcoff v. Dezen*, 74 So. 2d 59, 62-63 (Fla. 1954) (appointment of special masters “to perform a particular service” that will “aid the court in an accurate and expeditious determination” does not require consent, though reference of “whole case” to master for adjudication would require consent). The counting of ballots is peculiarly appropriate for such an appointment, for “where extensive computations are to be made, it is the better practice to refer the matter to a special master or commissioner than for the judge to undertake to perform the task himself.” *Ex Parte Peterson*, 253 U.S. 300, 313 (1920). *See also Continental Mortgage Investors v. Sailboat Key, Inc.*, 395 So. 2d 507, 508 (Fla. 1981) (noting that “a special master was appointed as a fact finder with regard to interest computations.”)

4. In election contests in Florida and around the country, it is common to appoint special court officers to supervise the necessary vote counting, while the court reserves the authority to make the ultimate legal and factual determinations to decide the outcome of the contest. *See, e.g., Matter of Protest of Election Returns to Circuit Judge by Marlene Duffy Young*, Case No. G96-2984 (Cir.

Ct., Polk Cty., Dec. 27, 1996) (appointing a Special Master to "obtain an accurate vote count of the results" and directing the Master to "begin with the work, deemed by the Special Master to be accurate, that has already been done by the Supervisor of Elections' office on a manual vote count of the election in question," but reserving authority to make final disposition of ballot discrepancies); *Willis v. Thomas*, 600 P.2d 1079 (Alaska 1979); *Fair v. Hernandez*, 116 Cal. App. 3d 868, 172 Cal. Rptr. 379 (1981). See also *Finkelstein v. Stout*, 774 P.2d 786 (Alaska 1989) (special master appointed in election recount dispute).

5. The appointment of special masters for factfinding purposes is an accepted procedure that the United States Supreme Court has routinely approved in election cases that require extensive configurations or computations, such as apportionment disputes. See, e.g., *Connor v. Williams*, 404 U.S. 549, 551 (1972) (noting that trial court had appointed special master to fashion new apportionment plan and directing that "[s]uch proceedings should go forward and be promptly concluded"); *Taylor v. McKeithen*, 407 U.S. 191 (1972) (reversing lower court ruling that had set aside reapportionment plan devised by court-appointed special master); see also *Chapman v. Meier*, 420 U.S. 1, 25 (1975) (noting trial court had appointed special master to devise new reapportionment plan); *Gaffney v. Cummings*, 412 U.S. 735, 740 (1973) (same). Other courts also have made extensive use of special masters in such matters. See, e.g., *Wilson v. Eu*, 1 Cal. 4th 707, 823 P.2d 545, 4 Cal. Rptr. 2d 379 (1992) (California Supreme Court approved congressional and legislative reapportionment plans proposed by court-appointed special master); *Moore v. Leflore County Bd. Of Elec. Comm'rs*, 502 F.2d 621, 623 (5th Cir. 1974) (affirming trial court decision that approved and implemented redistricting plan formulated by court-appointed special master).

6. As set forth in Plaintiffs' complaint, this election contest concerns, *inter alia*, the lawfulness of the vote tabulations that were certified in Miami-Dade County, where the county canvassing board voted to conduct and commenced a manual count of all votes cast for President, but then failed to complete the manual count.

7. The grounds of Plaintiffs' contest in Miami-Dade County will require a number of disputed votes to be counted in order to complete the manual counts that those boards lawfully commenced but then failed to complete. Any effective legal relief will require that the remaining "undervote" ballots themselves, which are the "best evidence" of how some electors voted and which have not yet been counted due to the failure of the machine tabulation equipment to properly read the ballots, to be counted. *State v. Smith*, 107 Fla. 134, 144 So. 333, 336 (Fla. 1932).

8. "The right to a correct count of the ballots in an election is a substantial right." *Id.* at 335. Here, if a completed count of these ballots must await the prior resolution of these legal proceedings, there could very well be insufficient time to carry out this task and vindicate any relief ordered by this Court.

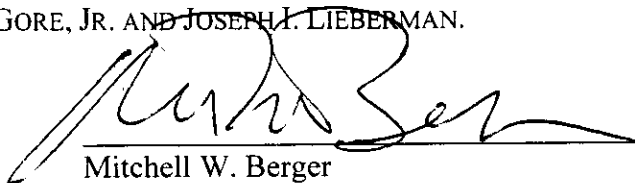
9. At the time the Board stopped counting, it had reviewed approximately 96,500 ballots from 139 precincts, approximately 20% of the Miami-Dade County precincts, resulting in a net gain of approximately 160 votes for Al Gore. If the 9,000 remaining uncanceled undervote ballots result in the same proportional increase in net votes as the ballots that were counted by the Board before it stopped counting, these ballots would result in approximately 600 net additional votes for Gore/Lieberman.

10. This Court should proceed by determining from the complaint whether Plaintiffs have made out a *prima facie* case that this election contest raises substantial issues about whether there

has been “[r]eceipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.” § 102.168(c), Fla. Stat. (2000). Because Plaintiffs such a showing has clearly been made, a Special Master, assisted by such staff as the Court deems appropriate, should be appointed to immediately set to work to organize and execute the further vote counts of all uncounted “undervote” ballots cast in Miami-Dade County, in order to compile the counts of all disputed votes that the Court would need to grant any meaningful relief on Plaintiffs’ claims in this expedited proceeding. *See, e.g., Burton v. Powell*, 325 N.E.2d 789 (Ill. App. 1975) (recount in election contest limited to specified errors that might alter the outcome); *Campbell v. Ramsey*, 92 P.2d 819 (Kan. 1939) (same); *Miner v. Beurmann*, 131 N.W. 388 (Mich. 1911) (same). Of course, all such vote counting should be undertaken in conformity with the practices universally followed under Florida law, including that the count be open to the public and conducted in the presence of observers representing both candidates, operating under strict guidelines to prevent any disruptions in counting the ballots. *See, e.g., § 102.166*, Fla. Stat. (2000).

WHEREFORE, Plaintiffs respectfully move for the appointment of a Special Master or Masters to perform the limited function of immediately completing the manual count of uncounted “undervote” ballots that was begun but not completed in Miami-Dade County.

Respectfully submitted this 27 day of November, 2000.



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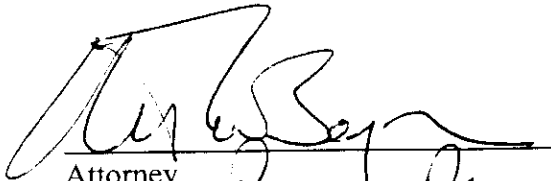
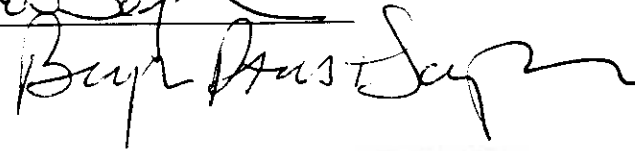
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for Nassau County Canvassing Board


Attorney




IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

CASE NO.:

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

06-2808

FILED
NOV 27 PM 12:15
CLERK OF THE COURT
LEON COUNTY FLORIDA

**MOTION TO APPOINT SPECIAL MASTER FOR
THE LIMITED FUNCTION OF IMMEDIATE COUNTING OF PALM BEACH
BALLOTS TO ALLOW EXPEDITED DISPOSITION OF THIS MATTER**

Plaintiffs move, pursuant to Fla. R. Civ. P. 1.490, for the appointment of Special Master or Masters to perform the limited function of immediately counting disputed votes in Palm Beach County, and reporting those results to the Court, as discussed further below. The appointment of such Special Master is necessary to expedite the Court's disposition of this matter, as must be done in order to complete the legal process for determining the outcome of the Presidential election in Florida in time to certify Florida's electors to the Electoral College on December 12, 2000. See 3 U.S.C. § 5. This matter is urgent, and of grave importance, since this proceeding clearly will determine which candidate will rightfully serve as the next President of the United States. In support of this Motion, Plaintiffs allege:

1. Rule 1.490(b) authorizes this Court to "appoint members of The Florida Bar as special masters for any particular service required by the court," or persons other than members of the Bar

when it is deemed "advisable" to do so. The "particular service" required in this matter is that Special Masters be appointed to perform the limited function of counting approximately 3308 disputed votes in Palm Beach County.

2. The Court has authority to appoint Special Masters for such limited factual purposes, with or without consent of the parties, where "the performance of a particular service" is "necessary to aid the Court in an expeditious disposition of the cause." *Powell v. Weger*, 97 So. 2d 617, 619 (Fla. 1957); *see also Conner v. McNew*, 237 So. 2d 190, 190-91 (Fla. 3d DCA 1970) (same). *See generally Slatcoff v. Dezen*, 74 So. 2d 59, 62-63 (Fla. 1954) (appointment of special masters "to perform a particular service" that will "aid the court in an accurate and expeditious determination" does not require consent, though reference of "whole case" to master for adjudication would require consent). The counting of ballots is peculiarly appropriate for such an appointment, for "where extensive computations are to be made, it is the better practice to refer the matter to a special master or commissioner than for the judge to undertake to perform the task himself." *Ex Parte Peterson*, 253 U.S. 300, 313 (1920). *See also Continental Mortgage Investors v. Sailboat Key, Inc.*, 395 So. 2d 507, 508 (Fla. 1981) (noting that "a special master was appointed as a fact finder with regard to interest computations.")

3. In election contests in Florida and elsewhere, special court officers are routinely appointed to supervise the necessary vote counting, while the court reserves the authority to make the ultimate legal and factual determinations to decide the outcome of the contest. *See, e.g., Matter of Protest of Election Returns to Circuit Judge by Marlene Duffy Young*, Case No. G96-2984 (Cir. Ct., Polk Co., Dec. 27, 1996) (appointing a Special Master to "obtain an accurate vote count of the results" and directing the Master to "begin with the work, deemed by the Special Master to be accurate, that

has already been done by the Supervisor of Elections' office on a manual vote count of the election in question," but reserving authority to make final disposition of ballot discrepancies); *Willis v. Thomas*, 600 P.2d 1079 (Alaska 1979); *Fair v. Hernandez*, 116 Cal. App. 3d 868, 172 Cal. Rptr. 379 (1981). See also *Finkelstein v. Stout*, 774 P.2d 786 (Alaska 1989) (special master appointed in election recount dispute).

4. The appointment of special masters for factfinding purposes is an accepted procedure that the United States Supreme Court has routinely approved in election cases that require extensive configurations or computations, such as apportionment disputes. See, e.g., *Connor v. Williams*, 404 U.S. 549, 551 (1972) (noting that trial court had appointed special master to fashion new apportionment plan and directing that "[s]uch proceedings should go forward and be promptly concluded"); *Taylor v. McKeithen*, 407 U.S. 191 (1972) (reversing lower court ruling that had set aside reapportionment plan devised by court-appointed special master); see also *Chapman v. Meier*, 420 U.S. 1, 25 (1975) (noting trial court had appointed special master to devise new reapportionment plan); *Gaffney v. Cummings*, 412 U.S. 735, 740 (1973) (same). Other courts also have made extensive use of special masters in such matters. See, e.g., *Wilson v. Eu*, 1 Cal. 4th 707, 823 P.2d 545, 4 Cal. Rptr. 2d 379 (1992) (California Supreme Court approved congressional and legislative reapportionment plans proposed by court-appointed special master); *Moore v. Leflore County Bd. Of Elec. Comm'rs*, 502 F.2d 621, 623 (5th Cir. 1974) (affirming trial court decision that approved and implemented redistricting plan formulated by court-appointed special master).

5. As set forth in Plaintiffs' complaint, this election contest concerns, *inter alia*, the lawfulness of the vote tabulations that were certified in Palm Beach County, where the county

canvassing board conducted a manual count of all votes cast for President, but failed to apply the correct legal standard for determining the intent of the voter.

6. The manual count of all ballots conducted by the Palm Beach County Canvassing Board and completed on Sunday, November 26, 2000, resulted in a net gain for Al Gore and Joe Lieberman of approximately 215 votes. The results of that manual count were removed from the election results certified by Secretary of State Harris to the Florida Elections Canvassing Commission on November 26. Therefore, the Secretary's certification is false and fraudulent, resulting in an erroneous certification by the Florida Elections Canvassing Commission.

7. Plaintiffs' contest in Palm Beach County requires 3308 valid votes to be counted that the County Canvassing Board improperly rejected ("disputed ballots"). Effective legal relief requires that the disputed ballots themselves, which are the "best evidence" of how electors actually voted and intended to vote but which have not yet been counted because of the application of an incorrect legal standard by the Palm Beach County Canvassing Board, must be examined and recorded as votes. *State v. Smith*, 144 So. 333, 336 (Fla. 1932).

8. "The right to a correct count of the ballots in an election is a substantial right." *Id.* at 335. Here, if a completed count of these ballots must await the prior resolution of these legal proceedings, there could very well be insufficient time to carry out this task and vindicate any relief ordered by this Court.

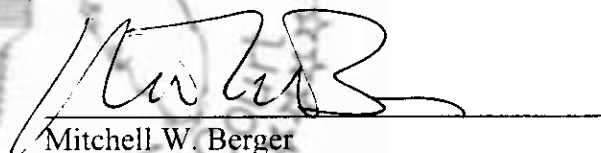
9. This Court should proceed by determining from the complaint whether Plaintiffs have made out a *prima facie* case that this election contest raises substantial issues about whether there has been "[r]eceipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election." § 102.168(c), Fla. Stat. (2000). If so, a Special

Master, assisted by such staff as the Court deems appropriate, should be appointed to immediately set to work to organize and execute the further vote counts of all disputed ballots cast in Palm Beach County, in order to compile the necessary information the Court would need to grant any meaningful relief on Plaintiff's claims in this expedited proceeding. *See, e.g., Burton v. Powell*, 325 N.E.2d 789 (Ill. App. 1975) (recount in election contest limited to specified errors that might alter the outcome); *Campbell v. Ramsey*, 92 P.2d 819 (Kan. 1939) (same); *Miner v. Beurmann*, 131 N.W. 388 (Mich. 1911) (same). Of course, all such vote counting should be undertaken in conformity with the practices universally followed under Florida law, including that the count be open to the public and conducted in the presence of observers representing both candidates, operating under strict guidelines to prevent any disruptions in counting the ballots. *See, e.g., § 102.166, Fla. Stat. (2000).*

For these reasons, Plaintiffs respectfully move for the appointment of a Special Master(s) to perform the limited function of immediately completing the manual count of uncounted disputed ballots in Palm Beach County.

Respectfully submitted this 27 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 27 day of November, 2000 to the following:

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for Governor Bush

Andrew McMahon
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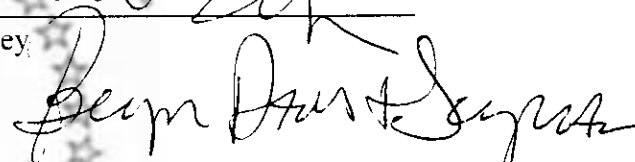
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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

KATHERINE, HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

CASE NO.:

00-2808

FILED
00 NOV 27 PM 12:15
CLERK OF THE CIRCUIT COURT
LEON COUNTY, FLORIDA

**MOTION TO PLACE DISPUTED MIAMI-DADE BALLOTS
IN THE REGISTRY OF THE COURT**

Plaintiffs ALBERT GORE, Jr., and JOSEPH I. LIEBERMAN, Nominees of the Democratic Party of the United States for President and Vice President of the United States, respectively, move this Court to order Defendant David C. Leahy, Supervisor of Elections for Miami-Dade County, to deliver to the possession of the Clerk of the Court all "undervote" ballots cast in the November 7, 2000 general election in which no vote was counted for President and Vice President of the United States, as described below. In support of this motion Plaintiffs show:

1. Defendant is custodian of all ballots in Miami-Dade County pursuant to Section 101.545, Florida Statutes (2000).

2. This is an election contest proceeding under section 102.168, Florida Statutes (2000). The election at issue is the election for President of the United States. Prompt resolution of this proceeding is critical to ensuring that the true and accurate will of the people expressed in the

November 7, 2000 Presidential election is known and reflected in the certification of Presidential Electors on or before December 12, 2000.

3. Section 102.168(8), Florida Statutes (2000) , empowers the judge in an election contest to "fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked to prevent or correct any alleged wrong," In any ballot contest a court must necessarily take possession of and review the ballots.

4. The complaint alleges among other things that the totals reported for votes cast in Miami-Dade County do not include legal votes that were rejected. In order for the court to investigate, examine or check these allegations, the court will likely have to review the ballots or have them reviewed on the court's behalf by a special master or other representative.

5. The electronic tabulating equipment that counts punchcard ballots operates by shining light through punched holes in the punchcard. If a voter does not completely dislodge a chad, the tabulating system equipment often does not count a vote that a voter intended to cast. An "undervote" results when the tabulating equipment does not count a vote for any candidate for an office. There are approximately 10,500 undervote ballots for the presidential election in Miami-Dade County, of which approximately 9,000 remain to be counted.

6. Florida statutes commit resolution of this most solemn issue to this court. Counsel for most parties including the Presidential candidates of both parties, are located in Leon County where the Court Clerk is located.

7. The law and the extraordinary public importance of this proceeding require that it be expedited in every way possible. Promptly gathering all of the ballots in question before the court

in a location immediately accessible to this Court will significantly expedite this proceeding and therefore serve the public interests.

8. Florida law guarantees the right to public inspection or examination of ballots and ballots cards at any reasonable time under reasonable conditions. §101.572, Fla. Stat. (2000) The broad directive and empowerment of section 102.168 and the need for judicial inspection of ballots to resolve issues provides the court authority to provide the relief requested. Any concerns of the defendants could be assuaged by ensuring that when the parties or the court inspect the ballots representatives of the defendants are present.

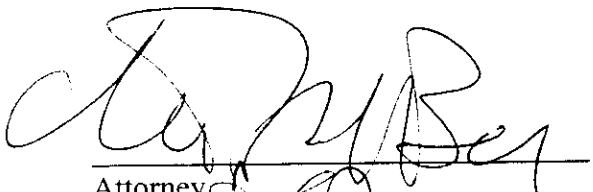
9. These ballots could be gathered and inspected in other more cumbersome and disruptive ways, such as by subpoena or by the court and counsel for all parties traveling the state to visit each county. But that process does not expedite this matter, serve the public interest, or even serve the parties' interests, unless a party has an interest in delay.

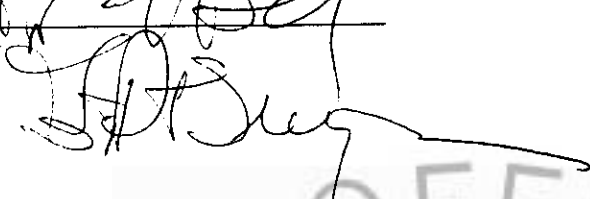
WHEREFORE, Plaintiffs move the Court to order Defendant David C. Leahy, Supervisor of Elections for Miami-Dade County, to deliver all "undervote" ballots cast for President and Vice President in the general election held in Miami-Dade County, to the possession of the Clerk of the Court of Leon County, or his designee, on or before 5:00 p.m., November 30, 2000, under such conditions and provisions for security as the court deems appropriate.

Respectfully submitted this 22 day of November, 2000.

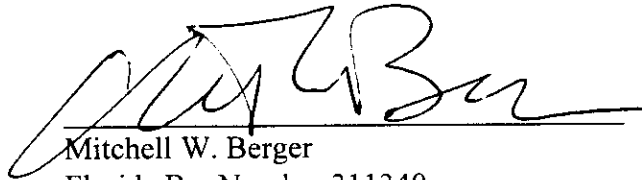
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for Palm Beach Canvassing Board

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
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ALBERT GORE, JR., Nominee of the
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Defendants.

CASE NO.:

00-2808

FILED
NOV 27 PM 12:14
LEON COUNTY FLORIDA

**MOTION TO PLACE DISPUTED PALM BEACH BALLOTS
IN THE REGISTRY OF THE COURT**

Plaintiffs ALBERT GORE, Jr., and JOSEPH I. LIEBERMAN, Nominees of the Democratic Party of the United States for President and Vice President of the United States, respectively, move this Court to order Defendant Theresa LePore, Supervisor of Elections for Palm Beach County, to deliver to the possession of the Clerk of the Court all disputed ballots cast in the November 7, 2000 general election in Palm Beach County for President and Vice President, as described below. There are approximately 3308 such disputed ballots. In support of this motion Plaintiffs show:

1. Defendant is custodian of all ballots in Palm Beach County pursuant to Section 101.545, Florida Statutes (2000).
2. This is an election contest proceeding under section 102.168, Florida Statutes (2000). The election at issue is the election for President of the United States. Prompt resolution of this proceeding is critical to ensuring that the true and accurate will of the people expressed through the

vote on November 7, 2000 is known and reflected in the certification of Presidential Electors on or before December 12, 2000.

3. Section 102.168(8), Florida Statutes (2000) , empowers the judge in an election contest to "fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked to prevent or correct any alleged wrong," In any ballot contest, a court must necessarily take possession of and review the disputed or questioned ballots.

4. The complaint alleges, among other things, that the erroneous totals reported for votes cast in Palm Beach County do not include legal votes cast by the voters. In order for the court to investigate, examine, or confirm these allegations, the court will need to review the ballots or have them reviewed on the court's behalf by a special master or other representative.

5. In conducting a manual recount of all ballots cast in the Presidential election, the Palm Beach County Canvassing Board refused to count ballots that contained a clear indication of the voter's intent. These erroneous rejections of thousands of valid votes were repeatedly objected to by Plaintiffs' counsel, causing the Canvassing Board to segregate and preserve these voting materials for judicial review. These "disputed ballots" number 3308 in Palm Beach County. They continue to be segregated from other ballots.

6. Florida statutes commit resolution of this most solemn issue to this circuit court. Counsel for most of the parties, including the Presidential candidates of both parties, are located in Leon County, where the Court Clerk is located.

7. The law and the extraordinary public importance of this proceeding require that it be expedited in every way possible. Promptly gathering all of the disputed ballots before the court in

the location where most counsel are situated will significantly expedite this proceeding and therefore serve the public interests.

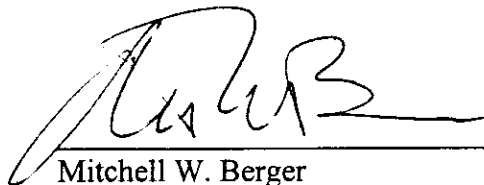
8. Florida law guarantees the right to public inspection or examination of ballots and ballots cards at any reasonable time under reasonable conditions. §101.572, Fla. Stat. (2000). The broad directive and empowerment of section 102.168 and the need for judicial inspection of ballots to resolve issues provides the court authority to provide the relief requested. Any concerns of the defendants could be assuaged by ensuring that when the parties or the court inspect the ballots representatives of the defendants are present.

9. These ballots could be gathered and inspected in other more cumbersome and disruptive ways, such as by subpoena or by the court and counsel for all parties traveling throughout the state to visit each county. That process does not expedite this matter, serve the public interest, or even serve the parties' interests, unless a party has an interest in delay.

For these reasons, Plaintiffs move the Court to order Defendant Theresa LePore, Supervisor of Elections for Palm Beach County, to deliver all "disputed ballots" segregated at the request of the Democratic Party during the recount of ballots cast for President and Vice President in the year 2000 election in Palm Beach County, to the possession of the Clerk of the Court of Leon County, or his designee, on or before 5:00 p.m., November 30, 2000, under such conditions and provisions for security as the court deems appropriate.

Respectfully submitted this 2 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 27 day of November, 2000 to the following:

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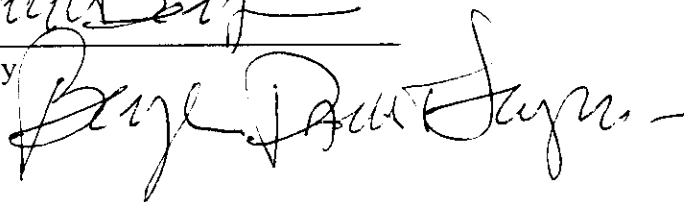
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Attorney 



IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
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ALBERT GORE, JR., Nominee of the
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Plaintiffs,

v.

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

CASE NO.:

00-2808

FILED
2000 NOV 27 PM 12:14
CLERK OF CIRCUIT COURT
LEON COUNTY FLORIDA

**REQUEST FOR PRODUCTION TO THERESA LEPORE IN HER CAPACITY
AS SUPERVISOR OF ELECTIONS OF PALM BEACH COUNTY**

Plaintiffs, Albert Gore, Jr., nominee of the Democratic Party of the United States for President of the United States in the 2000 General Election ("Al Gore"), and Joseph I. Lieberman, Nominee of the Democratic Party of the United States for Vice President of the United States ("Joe Lieberman"), pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, hereby make the following Requests to Produce:

That Defendant Theresa LePore in her official capacity as Supervisor of Elections, Palm Beach County, ¹ Florida, produce for inspection to the Circuit Court of Leon County, Florida, the following items:

1. All ballots cast in Palm Beach County for the general election held on November 7, 2000, which the Florida Democratic Executive Committee or its agents objected to as

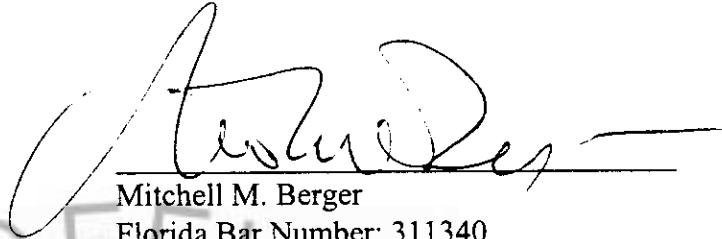
¹ Under Florida law, the Supervisor of Elections is the custodian of ballots cast for the general election. Section 101.545, Florida Statutes.

not being counted for Al Gore and Joe Lieberman during the manual recount conducted by The Palm Beach County Canvassing Commission, consisting of 3,308 ballots which the Canvassing Board had segregated.

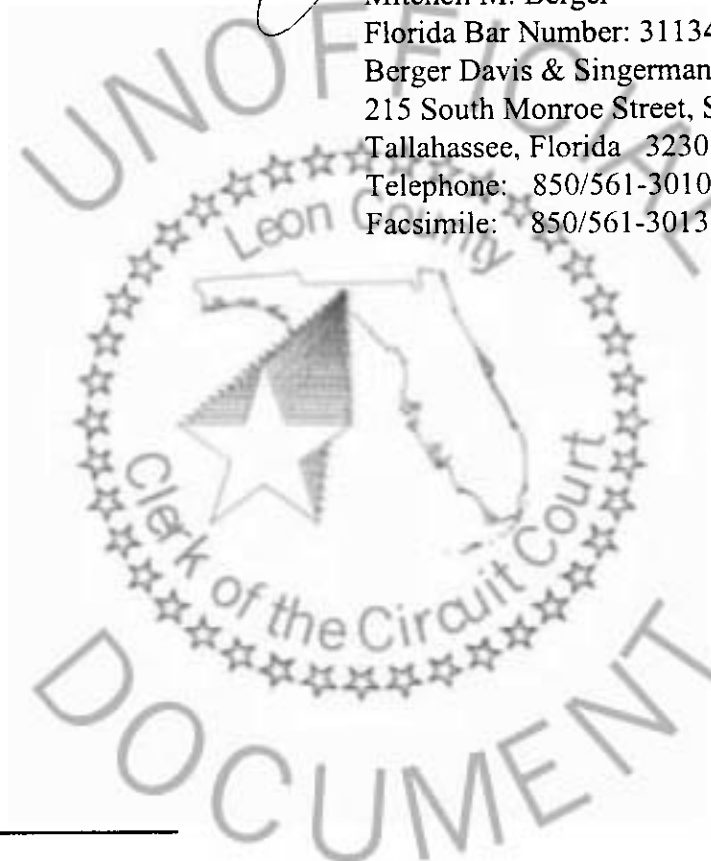
You are requested to comply with this request before Tuesday, November 28, 2000, at 11:00 a.m.²

Respectfully submitted this 27 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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² Rule 1.350 states: "The court may allow a shorter time" for a party to comply with a Request to Produce. Accordingly, Plaintiff has filed a Motion to Shorten Time.

CERTIFICATE OF SERVICE

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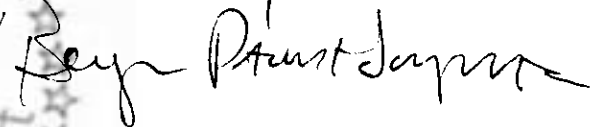
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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
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Defendants.

CASE NO.:

00-2808

FILED
NOV 27 11:15
CLERK OF COURT
LEON COUNTY, FLORIDA

**PLAINTIFFS' MOTION TO DETERMINE WHETHER LEGAL AND VALID PALM
BEACH COUNTY BALLOTS HAVE BEEN IMPROPERLY AND ILLEGALLY
REJECTED**

Plaintiffs have filed a Motion to Place Disputed Ballots in the Registry of the Court and a Motion to Appoint Special Masters for the Limited Function of Immediate Counting of Palm Beach Ballots to Allow Expedited Disposition of this Matter. Accordingly, Plaintiffs move this Court to DIRECT the Special Master so appointed to count all ballots so delivered by Theresa LePore, Supervisor of Elections for Palm Beach County, within 96 hours of issuance of such order or by 10:00 a.m. on Saturday, December 2, 2000. Thereafter, Plaintiffs ask this Court to determine that these ballots counted by the Special Master(s) were legal and valid votes, and therefore should not have been rejected.

1. On November 9, 2000, the Florida Democratic Executive Committee requested a manual recount of ballots cast in Palm Beach County for President and Vice President in the general election held on November 7, 2000. The Defendant County Canvassing Board of Palm Beach

County ("Defendant" or "the Board") voted to conduct a manual recount pursuant to Section 102.166(5)(c), Fla. Stat. (2000).

2. The Board conducted a full manual count of all ballots cast for President and Vice President in the November 7, 2000 election in Palm Beach County, in the process reviewing thousands of ballots that had not previously been tallied as a result of the failure of machine tabulation equipment to read votes that voters intended to cast. The manual count resulted in a net gain for Al Gore and Joe Lieberman of approximately 215 votes. On November 26, 2000, the Board certified the results of its manual count to the Florida Elections Canvassing Commission. Such certification did not include the results of the manual count completed by the Board. On November 26, 2000, Secretary of State Harris certified the results of the election, excluding the results of the completed hand count.

3. Section 101.5614(5), Fla. Stat. (2000), provides that "[n]o vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board." Last week, the Florida Supreme Court reaffirmed that standard. See *Palm Beach County Canvassing Board v. Harris*, SC00-2346, SC00-2348, SC00-2349, at 34-35 ("Our courts have repeatedly held that, where the intention of the voter can be ascertained with reasonable certainty from his ballot, that intention will be given effect even though the ballot is not strictly in conformity with the law. ... These voters should not be disenfranchised where their intent may be ascertained with reasonable certainty, simply because the chad they punched did not completely dislodge from the ballot.") (quoting Supreme Court of Illinois in *Pullen v. Milligan*, 561 N.E. 585, 611 (Ill. 1990)).

4. Further, Circuit Judge Jorge Labarga, instructing the Board on what standard to apply when identifying the intent of the voter, said that the decision by the Massachusetts Supreme Court

in *Delahunt v. Johnston*, 671 N.E.2d 1241 (Mass.1996), may be of assistance. In *Delahunt*, the Court instructed that "a discernible indentation made on or near a chad should be recorded as a vote for the person to whom the chad is assigned." *Id.* at 1242. Judge Labarga further noted that the *Delahunt* court flatly rejected the contention that voters may have started to express a preference in a candidate, made an impression on a punch card, but pulled the stylus back because they did not want to express a choice on that particular contest. The Court noted, "[t]he large number of ballots with discernible impressions makes such an inference unwarranted, especially in a hotly contested election." *Id.* at 1252. *Florida Democratic Party v. Palm Beach County Canvassing Board*, CL 00-11078 AB, at n.1.

5. Notwithstanding Circuit Judge Labarga's directive, the Order from the Supreme Court, and the substantial authority from every court which has ruled on this question, the Palm Beach County Canvassing Board applied an incorrect and unlawfully narrow standard to determine the voter's intent. The Board used a standard that failed to count all ballots with imperfectly punched "chads" for a presidential candidate.

6. As a result of the Board's failure to apply the correct the correct legal standard for determining voter intent, the Board rejected thousands of votes cast by voters whose ballots contained only an incompletely punched chad. Vigorous objections to the wholesale disenfranchisement of the voters let to these disputed ballots being segregated and preserved for judicial review. There are approximately 3308 of these "disputed ballots" in Palm Beach County. The bulk of these disputed ballots contain clear evidence of the voter's intent to vote for President, and should have been counted as legal votes for Al Gore and Joe Lieberman.

7. Section 102.168(3) allows a candidate for office to contest the certification of election of another candidate based on "rejection of a number of legal votes sufficient to change or place in doubt the result of the election." The Board's wholesale and cavalier rejection of thousands of valid votes does in fact affect the result of the election for President.

8. Plaintiffs have filed a complaint in this Court alleging that (1) the Board's failure to complete the recount and (2) the Board's failure to follow the correct legal standard to determine the intent of the voter, resulted in the improper rejection of a substantial number of legally cast votes sufficient to change or place in doubt the outcome of the election, and thus triggered a cause of action under Section 102.168(3), Florida Statutes (2000).

9. Application of the correct legal standard to the manual recount would have resulted in a gain of over 3100 votes for Al Gore and Joe Lieberman. In light of the paucity of votes separating the candidates, the magnitude of a vote-change that would "place in doubt" the election results is very small.

10. Unless this Court orders the Special Masters so appointed to count the disputed ballots segregated in the course of Palm Beach County's manual count, this Court will not be in a position to determine whether the number of legal votes for Al Gore and Joe Lieberman rejected by the Board is "sufficient to change or place in doubt the result of the election."

11. Section 102.168(8), Florida Statutes (2000), empowers the judge in an election contest to "fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked to prevent or correct any alleged wrong,"

12. This Court has the authority to appoint a Special Master to obtain an accurate count of the disputed ballots cast in the Presidential election in Palm Beach County and rejected by the

Board. *In the Matter of Protest of Election Returns to Circuit Judge by Marlene Duffy Young*, Case No. G96-2984 (Circuit Court, Polk County, Dec. 27, 1996), Circuit Judge Andrew D. Owens, Jr. issued an Order appointing a Special Master to "obtain an accurate vote count of the results" of an election for county commissioner. The court's order further stated that "[t]he vote count may begin with the work, deemed by the Special Master to be accurate, that has already been done by the Supervisor of Elections' office on a manual vote count of the election in question."

13. Any effective legal relief will require the remaining ballots themselves, which are the "best evidence" of how the electors voted, to be counted. *State v. Smith*, 144 So. 333, 336 (Fla. 1932). "The right to a correct count of the ballots in an election is a substantial right." *Id.* at 335.

14. Because the parties are striving to complete all legal proceedings before December 12, 2000, so as not to run afoul of 3 U.S.C. §5, Plaintiffs request expedited discovery on the issue of how many ballots – as revealed by a manual recount conducted according to the correct legal standard for determining the intent of the voter – were in fact cast for Al Gore and Joe Lieberman on November 7, 2000.

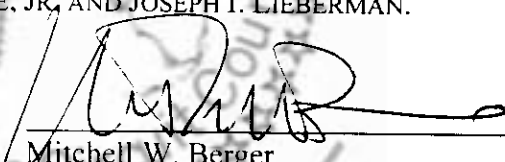
15. Plaintiffs also apply "for an order to the master[s] to speed the proceedings" and report their relevant vote tallies to the Court "with the least practicable delay." Fla. R. Civ. P. 1.490(f). The work required to complete the vote count in Palm Beach County must begin now to ensure that any judicial relief rendered in this proceeding will be timely. The counting of these ballots, already improperly delayed, cannot await the final resolution of the legal issues in this contest if the unique Electoral College deadline imposed by Federal law is to be met. If a completed count of these ballots must await the prior resolution of these legal proceedings, there could very well be insufficient time to carry out this task and vindicate any relief ordered by this Court.

Immediate action is crucial to effectuate the central purposes of allowing election contests, which include the "prompt and expeditious determination of the effect of any irregularities" and "to prevent the thwarting of the will of the electors either by fraud or by common mistakes honestly made." *Barber v. Moody*, 229 So. 2d 284, 287 (Fla. 1st DCA 1969), *rev. den.*, 237 So. 2d 753 (Fla. 1970). It also is crucial to avoid any gaming of the courts whereby "one recalcitrant party may successfully delay until a critical date." *Id.*

For these reasons, Plaintiffs move this Court to Order the Special Masters appointed by this Court to count all disputed punchcard ballots objected to by the Democratic Party before the Palm Beach County Canvassing Board for failure to count an incompletely punched chad, and delivered to this Court by Theresa LePore, Supervisor of Elections for Palm Beach County; and further, to utilize the legally binding intent of the voter standard established under Florida law, in order to ensure that all incompletely punched chads are counted to the extent they clearly demonstrate the intent of the voter, by no later than 96 hours following the issuance of this Court's order or 10:00 a.m. on Saturday, December 2. Nothing in this Motion shall cause delay to any other proceedings.

Respectfully submitted this 27 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 27 day of November, 2000 to the following:

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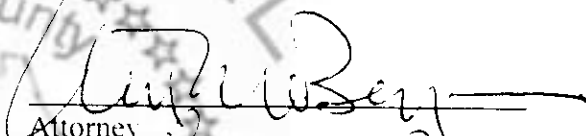
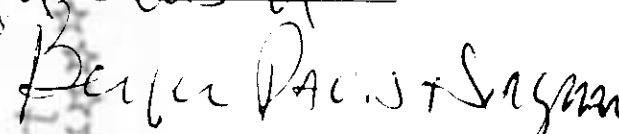
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November 27, 2000

Transcript of Emergency Hearing

IN THE SECOND JUDICIAL CIRCUIT COURT
IN AND FOR LEON COUNTY, FLORIDA
CASE NO: 00-2808

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States
for President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of the
Democratic Party of the United States
for Vice President of the United States,
Plaintiff,

vs.

KATHERINE HARRIS, as Secretary of State,
State of Florida, and SECRETARY OF
AGRICULTURE BOB CRAWFORD, SECRETARY OF
STATE KATHERINE HARRIS and L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF ELECTIONS,
individually and as members of and as
THE FLORIDA ELECTIONS CANVASSING
COMMISSION,

and

THE MIAMI-DADE COUNTY CANVASSING BOARD,
LAWRENCE D. KING, MYRIAM LEHR and DAVID
C. LEAHY, as members of and as THE
MIAMI-DADE COUNTY CANVASSING BOARD and
DAVID C. LEAHY, individually and as
Supervisor of Elections,

and

THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING,
and DAVID HOWARD (or in the alternative,
MARIANNE P. MARSHALL), as members of and
as the NASSAU COUNTY CANVASSING BOARD,
and SHIRLEY N. KING, individually and
as Supervisor of Elections,

and

THE PALM BEACH COUNTY CANVASSING BOARD,
THERESA LEPORE, CHARLES E. BURTON, and
CAROL ROBERTS, as members of and as the
PALM BEACH COUNTY CANVASSING BOARD, and
THERESA LEPORE, individually and as
Supervisor of Elections,

and

GEORGE W. BUSH, Nominee of the Republican
Party of the United States for President
of the United States and RICHARD CHENEY,
Nominee of the Republican Party of the
United States for Vice President of the
United States,

Defendants.

DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

00 DEC -5 PM 4:37

FILED

COPY



1
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3
4 IN RE: Emergency Hearing
5 BEFORE: Honorable N. Sanders Sauls
Circuit Judge
6 DATE: Monday, November 27, 2000
7 TIME: Commenced at 4:00 p.m.
8 Concluded at 5:05 p.m.
9 LOCATION: Leon County Courthouse
Tallahassee, FL
10 REPORTED BY: SANDI DIBENEDETTO-NARGIZ
11 Certificate of Merit
12 Certified Realtime Reporter
13 Notary Public - Florida
14
15
16
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20
21

22 ACCURATE STENOGRAPHY REPORTERS, INC.
23 100 SALEM COURT
24 TALLAHASSEE, FLORIDA 32301
25 850/878-2221
1-800-934-9090

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4 FLORIDA ELECTIONS CANVASSING COMMISSION:

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24
25

1 APPEARANCES: (continued)

2
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5 and
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13 REPRESENTING INTERVENOR NAMED WEST FLORIDA
14 VOTERS:

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P R O C E E D I N G S

1
2 THE COURT: Good afternoon, or good
3 evening. Let's see now, I guess we have more
4 lawyers than spectators.

5 Have you each given the court reporter your
6 names and addresses and your clients? Then would
7 it be appropriate -- let me find out if we can
8 find a lead or a liaison counsel perhaps to
9 initially, on each side, to let me find out which
10 if any additional appearances we need to make for
11 this record; and if so, go ahead and do it at this
12 time for the purpose of this hearing, recognizing
13 that all counsel that are appearing have already
14 given their appearances to the court reporter.

15 I suppose we have the plaintiffs, you may
16 proceed, Mr. Douglass.

17 MR. DOUGLASS: Your Honor, we represent the
18 plaintiff.

19 THE COURT: Anyone entering an appearance --

20 MR. DOUGLASS: I think everybody that is
21 entering an appearance today has entered an
22 appearance.

23 THE COURT: The court may not know
24 everybody's name to begin with, I wasn't here for
25 that, so we'll proceed.

1 MR. DOUGLASS: Mr. Boies will be
2 representing the plaintiff.

3 THE COURT: Who else?

4 MR. DOUGLASS: Mr. Mitchell Berger, Your
5 Honor.

6 MR. BERGER: Mitchell Berger, your Honor.

7 THE COURT: Mr. Berger. All right. Is that
8 it?

9 MR. DOUGLASS: Yes.

10 THE COURT: All right. Mr. Richard?

11 MR. RICHARD: Your Honor, I am Barry
12 Richard, I will be speaking for Governor Bush. I
13 am moving the admission Pro Hac Vice of the
14 following persons, all of them members of good
15 standing of the Texas bar and all having
16 previously been admitted before Judge Smith in the
17 hearing several days ago. Fred Bartlit,
18 B-a-r-t-l-e-t-t (sic.)

19 MR. BARTLIT: Your Honor, I just got
20 promoted, I am really not a Texas lawyer; I am a
21 Colorado and Illinois lawyer, so thanks for the
22 promotion.

23 MR. RICHARD: I don't know where they are
24 from, Your Honor, but they are all from somewhere.

25 THE COURT: Go ahead. You all drug me out

1 of Wakulla County today. Go ahead.

2 MR. RICHARD: Phil Beck, B-e-c-k.

3 MR. BECK: Your Honor, I am from Illinois.

4 THE COURT: How do you spell it?

5 MR. BECK: B-e-c-k.

6 MR. RICHARD: Daryl Brighton (sic),
7 B-r-i-g-h-t-o-n.

8 MR. BRISTOW: Close, Daryl Bristow, and I am
9 a Texas lawyer, be proud to have these men as
10 Texas lawyers.

11 MR. RICHARD: He is the one who wrote this
12 down, Your Honor, and I can't read his writing.
13 And Irv Terrell, T-e-r-r-e-l-l.

14 MR. TERRELL: Good afternoon, Your Honor, I
15 am from Texas.

16 THE COURT: Is that Jerrell?

17 MR. TERRELL: Terrell, T-e-r-r-e-l-l.

18 THE COURT: All right. That's it?

19 Apparently we have a number of pleadings and
20 motions, and it appears that the purpose for this
21 hearing or the intent was to utilize this time as
22 a scheduling hearing.

23 Apparently the first order would be your
24 emergency motion to shorten time and a request
25 which -- we are here now, we rendered the

1 emergency hearing -- to tend to such matters as
2 any time frames for answer, response, discovery
3 requests, and what have you.

4 And I also have, apparently, there has been
5 a motion -- has there been a motion to consolidate
6 filed in this case?

7 MR. DOUGLASS: Yes, Your Honor.

8 THE COURT: All right. What's your
9 pleasure?

10 MR. DOUGLASS: Perhaps the motion to
11 consolidate might be the first to take up with
12 Your Honor's permission. I think it speaks for
13 itself.

14 I think three other cases that are before
15 the Leon County Circuit Court, which we cited in
16 the motion, and I think they are different judges
17 on each one of those cases.

18 And we suggest that however this is done,
19 that all of these cases be consolidated under the
20 same judge to proceed, if necessary, in some of
21 the cases together, and we believe that would be
22 the appropriate way to do it. And we urge the
23 Court to consider that, and take that -- let us
24 know what you would like for us to do.

25 THE COURT: We'll tend to that first. The

1 procedure then would be -- and have counsel had an
2 opportunity to discuss it? The procedure or the
3 rule is if they have a motion to consolidate, and
4 I will be most happy to relinquish this case to
5 some other case to which perhaps it would be
6 consolidated. As I understood it, this was a
7 motion to consolidate this into some other case.

8 And that's perfectly appropriate. As far as
9 I am concerned, the rule would be if the parties
10 have agreed and if the parties are in agreement
11 and there is no objection to the consolidation,
12 then we will immediately schedule a short recess
13 and find the judge to whom these cases would be
14 consolidated; and I will send you lawyers to that
15 judge to obtain said judge's agreement, and we'll
16 proceed in that fashion.

17 (Phone Ringing.)

18 MR. DOUGLASS: That's one of the judges
19 calling, I guess.

20 MR. KLOCK: My name is Joe Klock, Your
21 Honor. I am one of the attorneys for the
22 Secretary of State and Florida Canvassing Board.

23 Your Honor, our view would be that once the
24 protest period ended last evening, that what then
25 occurs is you have a contest action that's

1 starting. There has never before been filed a
2 motion to consolidate, even though there are other
3 cases pending up here.

4 Our view would be that this is a new case,
5 Your Honor; it involves the contest period, and we
6 see no reason to consolidate with the other cases,
7 particularly since the first numbered case there,
8 Your Honor, is currently on certiorari review to
9 the Supreme Court of the United States where it is
10 set to be argued this Friday.

11 THE COURT: The question is, do you object?

12 MR. KLOCK: Yes, sir.

13 THE COURT: All right. I have one
14 objection. Yes, sir?

15 MR. RICHARD: Governor Bush objects for the
16 same reason. We think there is no reason for
17 consolidation. It's only going to confuse things.
18 And I also agree with Mr. Klock that the first
19 case that they are seeking to consolidate with is
20 not subject to consolidation. This is a new
21 lawsuit, it's a new issue, and we think it should
22 be moved forward without confusing the matter.

23 THE COURT: Anyone else? Well, you have a
24 brief response?

25 Apparently under the procedure, there being

1 objection, then I would be compelled, fortunately
2 or unfortunately, to respectfully deny the motion.

3 MR. DOUGLASS: That's perfectly agreeable
4 with us. We had not had an opportunity to discuss
5 this with counsel. I think --

6 THE COURT: Would it be helpful to take a
7 few minutes?

8 MR. DOUGLASS: I gathered from what they
9 said they already made up their minds, we don't
10 need to waste the time.

11 We certainly don't have, just in case you
12 know -- let you know -- we didn't object to Your
13 Honor hearing this case at all, it was just not
14 discussed.

15 THE COURT: It's a matter of whether or not
16 it would be more efficient.

17 MR. DOUGLASS: Correct. And the only thing
18 I could think of is that one of the judges at
19 least was familiar with all the problems in this
20 case, and that's not a good enough reason -- if
21 they object, I understand that, and we didn't care
22 one way or the other as long as we got one of our
23 good circuit judges, such as yourself.

24 THE COURT: Thank you, sir.

25 I guess that being the case, upon the denial

1 of the motion to consolidate, then we'll proceed.
2 Would it be your pleasure to take up the emergency
3 motion to shorten time and related matters
4 therein?

5 MR. DOUGLASS: Yes, Your Honor. I think the
6 motion speaks for itself. This case has to move
7 on a fast track, as has been suggested, and I
8 think all parties agree to that.

9 THE COURT: Is there any disagreement as to
10 what's suggested in this motion?

11 MR. KLOCK: Yes, Your Honor. We take
12 exception to it, Your Honor.

13 THE COURT: All right. You want to find out
14 what the exceptions are, and then respond?

15 MR. DOUGLASS: I may as well.

16 THE COURT: I read the motion, and
17 essentially, there is a request to shorten the
18 time for responses to pleadings and for the
19 establishment of liaison counsel, and some of the
20 normal things that you would do in litigation that
21 perhaps has some complexity to it.

22 I am not sure that this -- that we'd have to
23 bring out the manual for complex litigation for
24 this, but with this, some of these items, I think
25 we do need to have, given the timetable that I am

1 aware of and it's been pointed out in the motion,
2 that we do need to set some reasonable times. And
3 I realize the statute initially sets a 10-day
4 period, of course, for there to be an answer or a
5 response.

6 But under these expediciencies, I suppose I
7 need to hear counsel as to what would be
8 appropriate, whether it's two days, three days,
9 something of that order; and then how do we frame
10 the remainder of the time periods? And if we need
11 to have a short discovery cutoff, I don't know how
12 much discovery is going to be involved in this
13 case. I wouldn't think it's going to be any great
14 amount of discovery. But if it is, everybody is
15 going to have to be discovering 24 hours a day so
16 we can move this case along.

17 So let me find out what do you object to on
18 any of these specific provisions? Which ones can
19 we agree on, first?

20 MR. KLOCK: Your Honor, if I can start,
21 respectfully, Your Honor, I don't want to take
22 that position. But the difficulty we have, Your
23 Honor, as you suggested earlier, normally counsel
24 would confer on this.

25 Our law offices, Your Honor, are located

1 about 12 feet away vertically from the offices of
2 the plaintiffs; and yet, rather than attempting to
3 discuss any of this or setting any schedule, we
4 simply received a pile of documents at 2:30 this
5 afternoon for a hearing at 4.

6 So the difficulty we have is we do have
7 clients that we have to consult. And it's been
8 difficult for us to be able to get to all of our
9 clients to consult with them.

10 In addition, there is a time period set
11 forth in the statute, and at least one of our
12 clients believes that that time period should be
13 adhered to.

14 THE COURT: What time period are you talking
15 about?

16 MR. KLOCK: The 10-day period for the
17 answer. Obviously, there has to be some
18 accommodations because of the situation. But
19 again, Your Honor, the problem that we have today
20 is not caused by the Secretary of State or by the
21 Canvassing Commission. The Democrats that are the
22 plaintiffs in this case, Your Honor, are the ones
23 that urged the Supreme Court to reallocate the
24 time.

25 Under the statute there is a 7-day protest

1 period and a lengthy period for contests. As a
2 result of what they urged on the Supreme Court, we
3 now have a period where 19 days were dedicated to
4 the protest and 16 days are to be dedicated to the
5 contest.

6 THE COURT: That's what we've got to work
7 with.

8 MR. KLOCK: I understand that, respectfully,
9 Your Honor, but I think we have to be able to make
10 accommodations for the fact that everyone doesn't
11 have hundreds of lawyers at their disposal to be
12 able to do this, and a lot of the relief that they
13 are calling for requires -- they are calling for
14 additional judicial officers to be appointed,
15 which we think is improper under the statute. We
16 think it has to be controlled by Your Honor.

17 THE COURT: Let's don't get into that. All
18 we are talking about is a timetable right now for
19 the initial response of the defendants in this
20 case and what is a reasonable discovery period;
21 and then we'll peel each of these other matters
22 off as we go through. They are the subject, I
23 think, of some separate motions. I don't want to
24 start mixing them all up.

25 MR. KLOCK: I don't mean to be obstreperous.

1 I am not authorized to consent to a change in the
2 10-day reply time. And certainly anything else
3 Your Honor wants to move forward on, we'll do our
4 best to cooperate.

5 THE COURT: What I want to find out is what
6 everybody, under the burdens, that you feel you
7 can get by with, keeping body and soul together?

8 MR. KLOCK: Again, sir, the difficulty is
9 being able to -- we have not been able to discuss
10 any of these matters with our clients at this
11 point in time, having an hour and a half notice.
12 And they were discussing over the media all during
13 the weekend that this complaint was going to be
14 filed first thing this morning, it wasn't filed
15 until this afternoon.

16 And I would suggest, Your Honor, that maybe
17 the lawyers should meet together and see what can
18 be accommodated before the Court is put here with
19 a master calendar to try to work out something
20 that should be worked out among counsel.

21 THE COURT: Let's, if nothing else, we can
22 explore it today and then see what the areas are
23 that we need to see if we can get you to agree on.
24 And if not, we'll be back in the morning and I
25 will set us a time schedule.

1 Let's see, Mr. Richard, do you have a
2 position?

3 MR. RICHARD: Yes, Your Honor. When the
4 Supreme Court issued its ruling, it stated in
5 order to allow maximum time for contest pursuant
6 to section 102.168, amended certifications must be
7 filed with the Elections Canvassing Commission by
8 5 p.m. on Sunday, November 26.

9 It's clear that what the Supreme Court had
10 in mind there was not to truncate any more than
11 necessary the time that's available for us to
12 proceed on this election contest.

13 This is, certainly all of us agree, a most
14 important endeavor we are engaged in. And now we
15 are down to something different than what we have
16 done so far.

17 We've had a whole series of expedited
18 hearings that have proceeded at light speed, but
19 all of them have been issues of legality only.

20 Now for the first time we are about to
21 engage in an evidentiary hearing in which the
22 plaintiffs have raised a whole slough of
23 significant evidentiary issues that are going to
24 require the testimony of expert and lay witnesses;
25 it's going to require the Court, if the Court

1 decides that they have made even a prima facie
2 case to justify it, to look at a massive amount of
3 documentation or perhaps to look at it; my client
4 and the other defendants are going to need an
5 opportunity to learn who the witnesses are that
6 are going to be brought by the other side, to
7 prepare -- find and prepare our own witnesses.

8 And what I am going to suggest to the Court
9 is, I certainly wouldn't indicate that we need 10
10 days in which to respond to this pleading. I
11 think we can respond to the pleading in a
12 relatively short time.

13 What I do object to is the suggestion that
14 is being made here under subsection C that all
15 pleadings and all discovery requests should be
16 responded to by 5:30 p.m. on the day following the
17 service of the pleading or discovery.

18 I don't know of any court decision that says
19 that the plaintiffs, regardless of how important
20 this case is, are entitled to suspend basic due
21 process or the rules of procedure.

22 What I would suggest to Your Honor is that
23 you provide us with a reasonable time in which to
24 file responsive pleadings, and then we have a
25 reasonable period of time in which both parties

1 can engage in discovery.

2 I think the plaintiffs should be required to
3 present us with a list of their witnesses. Once
4 we get that list, we should have an adequate
5 opportunity to review it and determine what
6 witnesses we wish to provide in response to those,
7 and present them with our list, and then each of
8 us should have an adequate time to engage in
9 normal discovery, deposition and whatever else,
10 understanding that the Supreme Court anticipated
11 that all of this would not extend beyond December
12 12th.

13 THE COURT: I agree, that's the reason I
14 indicated what we need to do is set this. This
15 was the purpose that I set this hearing for, was
16 to have a scheduling period. And what I need to
17 find out is some indication of what would be
18 deemed to be reasonable.

19 Can we, for example, can we agree that we
20 can at least file our answers within three days
21 perhaps subject to amending it by one additional
22 day, if it was necessary, for which I would go
23 ahead and grant preliminary leave to so amend; and
24 then I need to find out what reasonably, if that
25 was the initial time period we were talking about,

1 then how much additional time are we talking
2 about?

3 An additional five, six, seven days, for
4 discovery? Obviously, at the time you file your
5 answers, the issues aren't joined until we -- this
6 is no different from any other litigation, except
7 it has some unusual aspects, and it's on a
8 shortened track.

9 But you are entitled to have, as in normal
10 litigation, to have them disclose to you a list of
11 the plaintiffs' witnesses and the exhibits that
12 they expect to utilize; and then you should have
13 some reasonable amount of time then to respond
14 with the defendants' list of witnesses and
15 exhibits; and then we would have to proceed in
16 that fashion.

17 So it really would help if counsel could --
18 you understand the nature and purpose of what we
19 need to do here today; if you could confer on some
20 of those things, and if you could get close to
21 some degree of reasonability, if you are a day or
22 two apart, then I will just set it.

23 I will give you some dates, but that will
24 give all of you an opportunity to have some input,
25 everybody having to recognize that everybody is

1 going to have to -- apparently you are all trial
2 lawyers, and trial lawyers live a dreadful
3 existence; you are always in some crisis, and all
4 of you are adept to that and apparently well
5 adapted.

6 MR. BECK: Your Honor, my name is Phil Beck,
7 and I also represent Governor Bush and Secretary
8 Cheney. And one of the problems with the short
9 notice is not even all the lawyers for the same
10 parties have had a chance to confer.

11 And I have been instructed by my clients to
12 note that while we certainly want to cooperate
13 with the Court, and we will proceed in an
14 expeditious way, we believe that the contest that
15 was filed today is untimely and ineffective under
16 Florida law. When we file our answer, we will
17 file a motion to that effect.

18 And we --

19 THE COURT: Under the rules of procedure,
20 you can file a response, it may be a motion to
21 dismiss or it may be an answer, or it may be a
22 motion to dismiss and an answer; and you are
23 entitled to what the rules provide.

24 MR. BECK: And I simply wanted to note for
25 the record that that is our position. And having

1 said that and having also, since we had
2 disagreements with the Gore team in terms of what
3 the deadlines mean and whether they ought to be
4 adhered to under the Florida Statutes, as a formal
5 matter, we, too, request 10 days to answer.

6 Having said that, if the Court wants us to
7 move along more quickly than that, we will be able
8 to do that. And we think from our side that we
9 could be able to answer the complaint probably by
10 the end of the day, Wednesday. I don't know
11 whether the other defendants can move that quickly
12 or not.

13 And then we would be happy to discuss
14 scheduling of how we proceed in terms of
15 discovery, either with the Court today or with the
16 plaintiffs' counsel if they prefer to do that in
17 private.

18 THE COURT: Well, what would be Wednesday?
19 I don't know why -- it just seems to me that I
20 could just say four days, answer or respond in
21 four days.

22 MR. BECK: That's fine with us, too.

23 THE COURT: Who is going to have that round,
24 I don't know. But at the same time, on that
25 fourth day, from the date of this filing, then the

1 plaintiffs need to furnish at that same time on
2 the fourth day their list of witnesses and their
3 exhibits. At least we can get some of this at
4 least started. And then I would think -- what
5 would you think, three days after that for the
6 defendants to answer, I mean file their list of
7 witnesses and exhibits?

8 If you do that, you have used up seven days.
9 And then you have got to have some reasonable
10 period for discovery. And I fear if you use then
11 seven days for that, then what have you got? Two
12 days left? I don't know.

13 MR. BECK: Judge, we --

14 THE COURT: Where are you going to go with
15 that time schedule?

16 MR. BECK: From the Bush side, we are
17 prepared to cooperate and move forward on
18 discovery expeditiously while we are drafting an
19 answer and motion to dismiss.

20 We haven't heard who their witnesses are.
21 We read their complaint, and they have a lot of
22 factual allegations on a lot of complicated
23 points. And we have seen their press conferences
24 where they had some of their witnesses.

25 THE COURT: We are not going to litigate

1 this in the newspaper or on TV.

2 MR. BECK: So we need them to tell us who
3 they expect to call to prove these points. And we
4 can start taking their depositions before we even
5 answer the complaint as far as we are concerned.
6 We agree that we want to move forward
7 expeditiously. If they will tell us their
8 experts, we can start taking their depositions
9 tomorrow or the next day. That will allow us to
10 figure out who we need to bring in on the other
11 side.

12 Once we have identified and prepared ours,
13 they can take our experts. So I think we can make
14 a lot of progress and still afford all the parties
15 an adequate opportunity to file meaningful
16 responsive pleadings.

17 THE COURT: Now your suggestion then is to
18 perhaps have them go ahead as quickly as they
19 could and furnish you the list of witnesses and
20 exhibits that they expect to utilize, which might
21 facilitate your answer and also your being able to
22 confer with your clients and also anticipate who
23 you might wish to --

24 MR. BECK: Exactly.

25 THE COURT: Let me find out from the

1 plaintiffs. Can I get any type of response to
2 that?

3 You heard some of these objections, and we
4 have got to figure out our time frame here. Is
5 some of that reasonable?

6 For example, would three or four days for
7 them to be able to respond, would that be
8 something that's adequate from your side?

9 If they could do that on theirs, and at the
10 same time, would you have any objection to going
11 ahead and furnishing your list of your witnesses
12 and your exhibits so that you can do that, say,
13 within two days from today, so they would have two
14 extra days for whatever purpose, that's normally
15 not -- normally you are going to answer, but then
16 if we have some of this, maybe we won't have just
17 a carte blanche denial. Maybe we'll have some
18 answer to admissions, and perhaps if they have
19 some more information, there are maybe not so many
20 without knowledge and, therefore, you can't admit
21 or deny.

22 MR. DOUGLASS: I am going to say just a
23 little bit and then turn it over.

24 THE COURT: All right.

25 MR. DOUGLASS: First of all, we have to move

1 this as quickly as we can in order to reach a
2 result, end result in this case. And I think
3 after hearing counsel for Governor Bush, that we
4 certainly would like to meet with them and see if
5 we can work out a schedule that's agreeable to
6 them. I think they are the other ones that are
7 equally interested in moving this case.

8 Some people like to drag these beyond the
9 time that you can be reasonably sure something can
10 be done. We all know what the deadline is here.
11 There are some things that we think should be done
12 without regard to the question of when you file
13 pleadings, when you do discovery, and these sort
14 of things, and I would like to ask Mr. Boies to
15 address that.

16 THE COURT: We are going to take those up in
17 just a minute.

18 MR. DOUGLASS: I think it's pertinent to
19 this. With Your Honor's permission, I would like
20 for him to address the whole subject. But I think
21 what I just mentioned, there are a couple of
22 things that are pertinent to this scheduling, too,
23 that I haven't mentioned that he will.

24 THE COURT: Let me just say then before --
25 and by all means, I will hear you in just a

1 minute. But it seems to me we need to get
2 something going.

3 The first thing I think we just need to go
4 ahead and just -- unless you have a position you
5 want to immediately respond back on this -- is
6 they need to file their responsive pleading. And
7 is four days too long? Can you do it in three?
8 And can you furnish them your -- do you have any
9 objection to furnishing your list of witnesses and
10 your exhibits in two days, a day before, and then
11 they file their response?

12 If not, we'll go ahead and set that. Then
13 we'll schedule another scheduling hearing to give
14 you an opportunity to see if you can do what all
15 trial lawyers do, and that is work out a time
16 frame that you all realize you've got to work
17 under.

18 MR. RICHARD: Your Honor, we are prepared to
19 file our responsive pleading in three days. With
20 respect to our response to their witness and
21 exhibit lists, I would like to request the Court
22 to give us an opportunity to see them first.

23 THE COURT: That's what I have said.

24 MR. RICHARD: We'll either work out an
25 arrangement with them or we'll come back to you

1 for further guidance.

2 THE COURT: What I said is they would -- you
3 will respond, you will file your answers or such
4 other appropriate response as you deem
5 appropriate, within four days. And within two
6 days of today's date, two days from now they will
7 furnish you -- and we'll go ahead and set some
8 time periods. You want it by 5 o'clock, close of
9 business? They will furnish you in advance their
10 witness list and their exhibits, the list of their
11 exhibits.

12 And then you will have -- you will file your
13 answers or responses, but I would think within at
14 least a day or two after that, then you should
15 furnish them your witness list and exhibits, or
16 the next day. I don't know -- that would give you
17 at least a day to look at them. It may not be
18 enough time. You probably would need two days.

19 MR. BECK: I think we would be able to get
20 it done in two days, Your Honor. My only
21 hesitation is that we don't know what areas they
22 are going to bring experts in on, and if they
23 bring --

24 THE COURT: Let's not set that up initially,
25 and if anybody gets caught short, we'll have a

1 quick hearing. And if we have to, we'll do it by
2 telephone. But we'll just set those basic items,
3 and then we'll leave the matters of the discovery
4 cutoff and other matters to a further hearing in a
5 day or so after you all had the opportunity to
6 work out some of these --

7 MR. DOUGLASS: Your Honor, to possibly solve
8 that, and this may be agreeable to them.

9 THE COURT: We are making some progress.

10 MR. DOUGLASS: If they have two days from
11 the time we give them that list, which we will
12 give them very promptly, I think that would help
13 move the case and give them an opportunity to have
14 enough time to look at what we are offering in the
15 way of witness lists and any experts we are going
16 to have.

17 And if that doesn't -- if after seeing that,
18 which I don't think they will, that they need to
19 suggest another day or something, we would be glad
20 to meet with them and furnish them that list as
21 promptly as we could, which would probably be
22 tomorrow. And then they could be in a position to
23 answer in two days from the time we gave them that
24 list, and that would help us --

25 THE COURT: We set our dates, and we'll just

1 use the time; if you serve it earlier, then they
2 need to move -- they need to move their next day
3 up.

4 MR. BOIES: We'll try to do that, Your
5 Honor.

6 THE COURT: And, of course, some simple
7 matters here, like if there is no objection to
8 having the services by hand delivery on liaison
9 counsel, for example, is there?

10 MR. BECK: No, Your Honor.

11 THE COURT: All right. Done. That's how
12 we'll proceed.

13 And other than that, I guess that's about
14 all we perhaps can do with this. Let me go ahead
15 and hear Mr. Boies, was there some other matters
16 or is this sufficient at this time to get us
17 moving?

18 MR. BOIES: I think this helps to get us
19 moving, Your Honor. I think we also -- one of our
20 motions was to get the ballots, the contested
21 ballots here to the registry of the Court.

22 THE COURT: All right. We'll start taking
23 up on your other motions now; is that what you
24 were going to --

25 MR. BOIES: I think so, Your Honor. I think

1 that is the one motion we probably need to take up
2 today if we can. And then the other motions
3 perhaps we can meet with other counsel and see if
4 we can work it out.

5 THE COURT: All right, now I need a
6 volunteer. Who is going to prepare me the
7 proposed order for the limited time frame that I
8 have just announced? I need a volunteer.

9 MR. BOIES: We'll work together.

10 THE COURT: I have a volunteer, and submit
11 it to opposing counsel, see if there is any
12 objection as to its form and content, but that's
13 effective from the bench as of now.

14 MR. DOUGLASS: We are going to work together
15 with these people.

16 MR. KLOCK: We are not on their side; we are
17 not on their side. There are at least three
18 sides, and may be four; the Secretary of State and
19 the Canvassing Commission are not on the side of
20 either of the candidates.

21 So I will be happy to serve as liaison
22 counsel, and my partner, Jon Sjostrom, and also
23 the canvassing boards, I think there is one here;
24 I don't even know if the other ones have been
25 served yet.

1 THE COURT: I need to find out who is
2 representing these individual canvassing boards
3 because we haven't gotten them, so you are hereby
4 designated as liaison. Mr. Douglass, you are
5 liaison?

6 MR. BERGER: Your Honor, I will serve.

7 THE COURT: Mr. Berger. All right. Then
8 someone on this side. Do I have a liaison
9 counsel?

10 MR. RICHARD: Barry Richard.

11 THE COURT: All right. Mr. Richard. Now,
12 we need also to have someone try to communicate as
13 quickly as possible -- there are people, I suppose
14 are there -- are there people --

15 THE CLERK: There are two representatives on
16 here (referring to telephone,) but the television
17 is echoing back.

18 THE COURT: Let's find out who we neglected.
19 Did you hear?

20 MR. GREENBERG: Your Honor --

21 THE COURT: Yes. Who is this?

22 MR. GREENBERG: This is Murray Greenberg in
23 Miami representing the Miami-Dade County
24 Canvassing Board. And I believe Gary Rutledge is
25 in the courtroom also representing --

1 THE COURT: I am looking at him right now.
2 Okay. So that board is represented. Who else do
3 we have?

4 MR. McMANN: Also on the telephone from West
5 Palm Beach, my name is Andrew McMann, Palm Beach
6 County Canvassing Board

7 THE COURT: All right. Then we'll -- who
8 else, I believe, does that leave out now that is
9 not here either telephonically or in person? Is
10 it one other? Nassau?

11 MR. BERGER: Nassau County, Your Honor, it
12 doesn't sound like they are here, Your Honor.

13 THE COURT: All right. Then counsel for
14 Palm Beach and Dade; I don't know, Mr. Rutledge,
15 can you see me there?

16 Do any of you have any objections to the
17 limited time schedule or time frame that I have
18 just attempted to establish?

19 MR. RUTLEDGE: We do not, Your Honor.

20 MR. GREENBERG: For Miami-Dade, Your
21 Honor, we do not. Though I would point out as of
22 this moment, Miami-Dade County Canvassing Board
23 has not yet been served. But assuming we will be
24 served, we have no problem with the time frames
25 Your Honor has established.

1 THE COURT: All right. Be looking for the
2 sheriff, I assume.

3 Who else do we have?

4 MR. McMANN: For the Palm Beach County
5 Canvassing Board, we also have no objection to the
6 time frames that Your Honor set forth.

7 THE COURT: Bless you. All right.

8 Then I will need to -- Mr. Rutledge, since
9 you are here, I will pick on you. Since you
10 represent one of the canvassing boards, can I
11 request that you at least give some telephone
12 notice to whomever you can find that may be
13 representing Nassau, just as a courtesy, or is
14 that going to create a problem? Just inform them
15 of the time schedule?

16 MR. RUTLEDGE: We'll be glad to, assuming
17 counsel for plaintiffs can give us the appropriate
18 information, Your Honor.

19 MR. DOUGLASS: We'll give you what we have.

20 MR. RUTLEDGE: Yes, Your Honor.

21 THE COURT: They would probably be more
22 receptive to the information if it's from a
23 co-defendant rather than the plaintiff. But let
24 me charge the plaintiff with notifying them, too,
25 and that way we got double coverage.

1 All right. Then where are we now? We need
2 to go back to your motions.

3 What is your pleasure? You got some
4 requests to produce, and you got some motions
5 concerning the registry of the Court.

6 MR. DOUGLASS: I want to request that the
7 next hearing we have a chair.

8 THE COURT: Chair?

9 MR. DOUGLASS: Yes. I don't want to stand
10 in everybody's way. Besides, I don't like to
11 stand up a long time, I like to move around.

12 THE COURT: We have to try the Court
13 administrator to see if we can find Mr. Douglass a
14 chair.

15 MR. DOUGLASS: I don't think it's the Court
16 administrator's fault, just more showed up and got
17 here first.

18 THE COURT: All right. Don't be tardy for
19 now on.

20 (Discussion off the record.)

21 MR. BOIES: Your Honor, both the request to
22 produce and the motion to have the ballots brought
23 into the registry of the Court is designed to get
24 the contested ballots here in Leon County before
25 the Court.

1 My understanding from Mr. Zack, who spoke to
2 the lawyers for the Miami-Dade board, is that they
3 do not have an objection to this court ordering
4 that those ballots come here. I hope the same
5 thing is true for the Palm Beach County board.

6 THE COURT: What says Palm Beach, can you
7 hear?

8 MR. McMANN: Yes, Your Honor. We only have
9 one concern. We don't have any objections to
10 bringing the disputed ballots to Leon County, but
11 we are also under a court order issued by Judge
12 Labarga here in the Fifteenth Circuit that we make
13 all of the ballots available for public
14 inspection, which was suppose to begin today.

15 We didn't get the logistics set forth, and
16 my understanding is that's suppose to start
17 tomorrow.

18 I don't know how long -- how many ballots
19 they would like to look at, but the request is for
20 all the ballots, which totals some 467,000. But
21 if Your Honor wants to order us to bring them up
22 there expeditiously, we'll be happy to go back to
23 Judge Labarga and ask him to terminate the public
24 inspection period.

25 THE COURT: I am not going to try to do

1 anything contrary to the judge's order. But let's
2 find out if we can do this some other way.

3 I assume, you wish to have the -- maybe a
4 twofold purpose -- that is to preserve the ballots
5 and ensure the integrity of the ballots in the
6 condition that they are in; and also, have the
7 opportunity to make such discovery as you look at
8 the ballots.

9 These ballots apparently are being held by
10 the duly authorized officer under Florida law,
11 that is the supervisors of elections, and they are
12 charged with the duty of safe guarding those.

13 If we need to perhaps see if we can beef up
14 some security, if that's a concern, that's a
15 matter that perhaps we can attend to. And then as
16 far as them being available for discovery, perhaps
17 if they are there, and they are -- if you come in
18 and notify them when you wish to, for purposes of
19 discovery, to look at them, is there any problem
20 with going there to do that?

21 And that way we are not running contrary,
22 apparently I was not aware there is Judge Labarga
23 in Palm Beach that has issued an order down there.
24 And he would actually have to do something with
25 that, rescind it or vacate it or --

1 MR. GREENBERG: Your Honor, this is Murray
2 Greenberg in Miami. We have no objection to what
3 Your Honor is suggesting. However, in view of
4 what has happened, we feel it would be imperative
5 and we would urge Your Honor to step forth with
6 specificity after we speak with the supervisor of
7 elections, the exact time, manner, place,
8 location, who can come in, all the security
9 necessary, before anybody is allowed to touch or
10 look at any of the ballots. With parameters set
11 by the Court, we will be more than happy to comply
12 with any order of Your Honor.

13 THE COURT: What do you say?

14 MR. BOIES: Your Honor, first with respect
15 to Miami-Dade, where we do not have an outstanding
16 judicial order, we would try to work out a
17 proposed order, send it on to them, see if they
18 have any objection. If not, present it to the
19 Court. And obviously we would give copy to the
20 other parties as well for their consideration.

21 With respect to Palm Beach County, we are
22 only seeking to bring up here the contested
23 ballots, approximately 3,000 ballots. And the
24 purpose of bringing them up here is not merely for
25 safe guarding purposes. We hope and expect they

1 are being safe guarded in Palm Beach County.

2 But also so that they can be reviewed here
3 by the lawyers who are working on this matter, and
4 so that they can ultimately be reviewed either by
5 the court or by a special master or both.

6 These are obviously ballots that ultimately
7 the Court has got to make a judicial decision on;
8 and because of the time frame, we want to get them
9 here so that that can proceed as soon as the Court
10 is prepared to determine that.

11 THE COURT: You say that's 3,000 in Palm
12 Beach and how many in Dade?.

13 MR. BOIES: Approximately 10,000. This is
14 of the 5- or 600,000 ballots that are there in
15 their entirety. We are not asking for all the
16 ballots, we are only asking for the ones that are
17 contested.

18 THE COURT: Let's find out what the other
19 parties would do.

20 MR. GREENBERG: Your Honor, Miami-Dade here
21 again.

22 With all respect to Mr. Boies, and we do
23 want to cooperate, it's not just merely a matter
24 of working it out with us.

25 We would need the Republican party and

1 Democratic party to agree to a procedure and then
2 submit it to us, Your Honor. With all due respect
3 I think that's the most expeditious way to
4 accomplish what the Court is trying to do.

5 THE COURT: Well, I was just going to call
6 on the other parties here, because they're going
7 to be participating in the discovery. And we have
8 to hear from them, too. He made that suggestion
9 as far as your client is concerned.

10 Now we need to find out if there is any
11 objections to that from any of the other parties.
12 Mr. Klock, do you have any position?

13 MR. KLOCK: I think it would depend, again,
14 on the procedure that's followed, Your Honor.
15 We'll obviously cooperate. We need -- as long as
16 no ruling is being made that those are the only
17 ballots that are in question, if they want to
18 bring up a certain number of ballots and
19 arrangements could be made, that's fine.

20 But I assume the Court is not prejudging
21 that those are the only ballots that will be
22 considered either in that county or in the state.

23 THE COURT: I have no idea. But apparently
24 you have no objection to that, Mr. --

25 MR. DOUGLASS: A suggestion,

1 which we haven't really had a chance to discuss,
2 but if we could -- I think we could resolve this
3 pretty quickly one way or the other between
4 counsel as to how we are going to handle this
5 matter, recognizing the problems in the future
6 that might arise.

7 I think we if you give us that opportunity,
8 we may be able to do it. If we don't, then we can
9 come back and present each side on the matter.

10 MR. RICHARD: Your Honor, in fairness to
11 Mr. Douglass, I need to state what our position is
12 so that we don't leave with -- that he has a false
13 sense that I agreed we can work this out.

14 What this motion is leading to, Your Honor,
15 is not preservation of these ballots. I don't
16 think anybody is fearful that the supervisors will
17 not preserve these ballots appropriately.

18 What it's leading to is the plaintiffs' next
19 motion, where they are asking this court to
20 appoint masters to begin doing what these boards
21 have already done and count these ballots again.

22 It's our position that there is no authority
23 either in law or the rule or the statute for this
24 court to appoint a master to, once again, do a
25 recount of these ballots.

1 THE COURT: I can't get to that motion,
2 Mr. Richard, until we get issues joined here,
3 that is your client, as well as the other
4 defendants, have had an opportunity to answer or
5 respond and then we proceed.

6 MR. RICHARD: I agree entirely, Your Honor.
7 I am just saying that I see no reason to make
8 these supervisors ship hundreds of thousands of
9 ballots up here for the sole purpose of their
10 being counted by a master before Your Honor even
11 reaches the threshold question of whether or not
12 there is authority or basis for doing that.

13 THE COURT: That's the reason I thought it
14 was a matter of discovery. It might be better for
15 counsel to go where the ballots are, and they are
16 in safe keeping, rather than having them brought
17 up here.

18 MR. RICHARD: I agree entirely.

19 THE COURT: We have explored this. And
20 perhaps you all can think about it and come up
21 with a better resolution. But at least we brought
22 it up here and we do need to -- apparently, do you
23 have outstanding requests for production to these
24 defendants, or is it just this appeal that's been
25 filed here?

1 MR. BOIES: The only request for production
2 is the request for production -- that's
3 outstanding -- is the request for production of
4 the ballots, I believe, Your Honor.

5 THE COURT: A limited number?

6 MR. BOIES: And it's not hundreds of
7 thousands of ballots. It's approximately 10,000
8 ballots from Miami and approximately 3- or 4,000
9 ballots from Palm Beach.

10 MR. McMANN: Your Honor, this is Andrew
11 McMann for the Palm Beach County Canvassing Board.
12 I did see reference to these outstanding discovery
13 requests, and we did get served with a copy of the
14 request to the supervisor of election for
15 Miami-Dade; but we have not yet seen the request
16 for production directed to those counties, the
17 Palm Beach County supervisor of elections.

18 I assume that's just an issue of them faxing
19 me and we let counsel's office at Berger Davis
20 know that we haven't received that yet.

21 THE COURT: Let's do this. Why don't I just
22 order that you respond within two working days to
23 their request to produce ballots? If you object
24 or you are not able to work it out in the
25 meantime, do it like in the normal course.

1 But here on an expedited basis, you got an
2 objection, they will set it down for hearing,
3 we'll hear it. All right? Satisfactory?

4 MR. BOIES: Thank you, Your Honor.

5 THE COURT: All right. Next? What's on
6 your list? Now you want to -- that sort of
7 entails your motion to place these in the registry
8 of the Court. That's a little premature right
9 now, would it not be?

10 MR. BOIES: Your Honor, I think that that
11 motion has to await the resolution of the motion
12 to produce.

13 THE COURT: Fine.

14 MR. RICHARD: Your Honor, I am assuming
15 we'll just add that to the order we are preparing
16 on the first issue?

17 THE COURT: Very good. All right. Making
18 progress.

19 What's the next item that you have here? We
20 are going to retain the motions concerning any
21 special master appointments, those will remain
22 under submission, subject to further hearing and
23 argument and response.

24 And then we have -- do we have any other
25 motions that need to be taken up today? If not, I

1 believe --

2 MR. BOIES: I don't think so, Your Honor.
3 We would ask the Court to set down the motion on
4 the special master promptly; there is obviously
5 going to be an objection to it.

6 We believe that under the election contest
7 statute, particularly subsection 8, the Court has
8 broad powers to make sure that this is resolved.
9 We are going to be working, and I am encouraged by
10 counsel's statements that they are going to
11 cooperate to work expeditiously get this done.
12 But there will come a time when, if there is no
13 special master, the Court or multiple judges of
14 the court are going to have to look at ballots to
15 make a judicial determination; and that has got to
16 be an unappetizing prospect.

17 THE COURT: Do you have a magnifying glass?
18 I need stronger glasses.

19 Let me ask you this. Can we resolve that
20 perhaps by just going ahead and scheduling a
21 hearing on that, that would occur a day or two
22 days after their time to file their answers?
23 Would that be appropriate, Counsel?

24 MR. RICHARD: That would be fine. I think
25 two days would be fine.

1 THE COURT: Would that -- that gives you a
2 set day, and we are now talking about them having
3 four days. So then they would have -- then we can
4 go ahead, you can go ahead and schedule it with
5 Ms. Marlene.

6 MR. BOIES: I would agree, Your Honor, that
7 in the usual case that would be very expeditious.
8 However, if you are focusing on the fact that we
9 all know --

10 THE COURT: Is that a matter lawyers say
11 that we can bring up any time?

12 MR. BOIES: I think it's just a matter of
13 law that can be brought up before the answer. I
14 think it's important to get it resolved quickly
15 because we've got to get as much out of the way as
16 we can so that there is an opportunity for the
17 Court to make a resolution and then everything
18 seems to go on appeal in this case.

19 THE COURT: Let me go back to the well again
20 and see what kind of compromise or agreement we
21 can work. Mr. Richard.

22 MR. RICHARD: It sounds to me, Your Honor
23 when counsel says it's a matter of law, that what
24 he is asking this court to do is to effectively
25 grant the relief that they are asking for before

1 we even have a trial, much less a decision that
2 they made a prima facie case.

3 He is asking this court, in addition to
4 granting them relief, to undertake the
5 extraordinary burden and expense of doing, once
6 again, what at least the board in Palm Beach
7 County has already done under the close
8 supervision of a judge they went for two times and
9 got orders from supervising what they did. Now
10 that's the entire relief they are asking for here.

11 So to say that we should just get started
12 doing it, before Your Honor even addresses the
13 pleadings to determine whether there is a prima
14 facie case, is backwards and it's contrary to the
15 rule of law.

16 THE COURT: I intend to agree as far as the
17 timetable. I think that the defendants need the
18 opportunity to file their responses, answers,
19 whatever they deem appropriate. And then we'll
20 just -- we'll leave that as filed. And then you
21 may bring it up as soon thereafter as you deem
22 appropriate after the time for filing responses
23 has expired.

24 I just won't set a date, but we'll leave
25 that to you. If it's the next day or the next

1 day, then we'll find out. Perhaps you all can
2 reach some common agreement at that point after
3 everybody's position has been set forth in your
4 pleading.

5 And perhaps we can handle it that way. So I
6 will just leave it there without -- with leave for
7 you to recall it up for hearing, just as soon as
8 again in your judgment you feel it ripe, and then
9 we'll hear what their response is at that hearing.

10 And then we can go ahead and, of course, put
11 it on my calendar. All right. If there is
12 nothing -- yes, sir?

13 MR. KLOCK: So I understand it, the Court
14 has appointed four liaison counsel: Mr. Richard
15 for the defendants, I gather Mr. Douglass for the
16 plaintiffs, myself for the Secretary and the
17 Canvassing Board, and Mr. Rutledge for the
18 canvassing boards in the three counties; is that
19 correct?

20 THE COURT: Well, Mr. Rutledge --

21 MR. RUTLEDGE: I think my responsibilities
22 got expanded, Your Honor.

23 THE COURT: Let me ask your co-counsel, do
24 you authorize his expanded duties up here?

25 MR. McMANN: We would -- in Palm Beach

1 County we certainly prefer to have anything that's
2 directed to the county canvassing board come to
3 us.

4 THE COURT: Well, he going to be the liaison
5 then. And he is going to have to also liaison
6 with the other canvassing boards. All right. If
7 there is nothing further -- yes, sir, Mr. Berger.

8 MR. BERGER: I agree to take on the
9 responsibility of liaison for the board parties.

10 THE COURT: That was the other we were
11 missing.

12 MR. MYERS: Your Honor, there are at least
13 two motions to intervene that are currently
14 pending. Is the Court inclined to address those
15 now or would you prefer to do those later?

16 THE COURT: Is there any objection? Have
17 you received copies? Who are the intervenors?
18 Let's find out. This is sort of like show up and
19 we'll find out what the motion is.

20 MR. MYERS: We have served by hand delivery
21 these earlier today, Your Honor. I represent four
22 West Florida voters and taxpayers who request
23 leave of court to intervene into this action.
24 That motion was filed at about 1 o'clock today,
25 and should have been presented to you and I

1 apologize if counsel has not received it.

2 THE COURT: I haven't seen it, Mr. Myers.

3 MR. MYERS: I have a copy here if you would
4 like to see it, Your Honor.

5 THE COURT: More importantly, I would think
6 they're the people holding the objections, let's
7 see if they have any objections.

8 MR. MYERS: And I have extra copies for
9 them, Your Honor.

10 THE COURT: All right. Well, circulate it,
11 I suppose. Who else proposed to intervene?

12 MR. MADIGAN: Your Honor, a motion to
13 intervene was filed on behalf of Mat Butler this
14 morning; copies were faxed to all counsel.

15 We want to confer with counsel and see if
16 there is any objection to that, and possibly
17 submit a proposed order to you. We have not been
18 able to touch base with everybody.

19 THE COURT: Let me find out, Mr. Madigan,
20 who is it that you represent?

21 MR. MADIGAN: Mat Butler, a registered voter
22 in Collier County, Florida, Your Honor.

23 THE COURT: I see.

24 MR. MADIGAN: Mr. Butler was an intervenor
25 in the prior suits involving the same parties.

1 THE COURT: Listen up, Counsel. Did all of
2 you hear who these named proposed intervenors are?
3 And does anybody object to their motion? Do you
4 feel that you haven't had adequate opportunity to
5 determine whether you have an objection?

6 MR. RICHARD: My client has no objection,
7 Your Honor.

8 THE COURT: All right.

9 MR. BOIES: Your Honor, I think we do have
10 an objection. I think it's going to be very
11 important that this case move expeditiously. I
12 think to have a number of intervenors is going too
13 inevitably delay that. I am sure that's not their
14 intention.

15 However, as the Court knows, there are other
16 contest actions pending in this county, and if
17 they want to intervene someplace, we would rather
18 they intervene there as opposed to this case.

19 We don't think there is a basis for
20 intervention. We think it will delay the
21 resolution of this case. The Court has a limited
22 amount of time already to deal with the issues
23 involving the parties here. And we think that
24 that is the appropriate way to proceed.

25 MR. MYERS: The basis for intervening is

1 that the persons who seek to intervene are seeking
2 in an action that creates a claim that they are
3 interested in and that the litigation, the subject
4 litigation is a part of what they are seeking to
5 receive.

6 I know it wasn't a hundred percent clear,
7 but Your Honor, in this particular case
8 Vice-President Gore has sought to contest the
9 election, and my clients are concerned about how
10 the election overall was done in the State of
11 Florida.

12 It seems to me that if they have standing as
13 voters and taxpayers to file a contest action on
14 their own, then they certainly would have a right
15 to intervene into this particular action and have
16 the Court address those issues at the same time
17 that the Court is addressing the issues raised by
18 Vice-President Gore.

19 As the Court will see in my motion, these
20 voters from West Florida are concerned about the
21 impact that the media had on their voting in that
22 area. They are concerned about the military
23 ballot issues which we understand not all of the
24 counties agree to count all of the military votes,
25 even if -- because they didn't have a postmark.

1 They are concerned about other issues, in addition
2 to that, that include how the election came about
3 in the counties where the hand votes were done,
4 the manual hand count.

5 So they are aligned with this particular
6 litigation. Their interests are aligned with this
7 particular litigation. It is solely within the
8 broad discretion of the Court to decide whether
9 they would intervene in this particular action.

10 MR. MADIGAN: If I may, we would, of course,
11 submit similar argument.

12 Mr. Butler had, as I noted earlier, been the
13 intervenor in the prior suit that went to the
14 Florida Supreme Court and is now being considered
15 in the United States Supreme Court. He has a
16 stake in this, somewhat different than the West
17 Florida voters, but perhaps Mr. Myers, neither of
18 us knew the other was coming today; we may be able
19 to coordinate to make sure there is no repetition;
20 but a voter certainly has standing in these
21 proceedings, and that's who we represent.

22 MR. KLOCK: Your Honor, we have no objection
23 and we point out to the Court that it doesn't make
24 any sense to have it determined on a willy nilly
25 basis. It would make no sense for this court to

1 come to one determination and have another action
2 filed in the same court come to a different one.

3 THE COURT: Well, you can't get too many
4 cooks in the stew.

5 You say your client was an intervenor in the
6 prior action?

7 MR. MADIGAN: Yes, Your Honor.

8 THE COURT: What about your client; they
9 weren't, were they?

10 MR. MYERS: No, they weren't, Your Honor.

11 MR. MADIGAN: Again, perhaps if Mr. Myers
12 and I might consult to make sure that the actions
13 on behalf of the voter, perhaps there are some
14 areas of consistency between them that we can work
15 to minimize.

16 I don't think there is going to be any
17 disruption at all, Your Honor. We are all here
18 about the voter, but we'll be happy to work
19 together to make sure that there is no overlap in
20 the representing of some citizen voters' interests
21 here which, again, is why we are here.

22 THE COURT: Let me, Mr. Douglass, did you
23 have a further response?

24 MR. DOUGLASS: We just had an opportunity to
25 look at this, but I would like to point out to the

1 Court without reference to the relief sought, but
2 as I look at this quickly, this might not be
3 proper under the rules.

4 They are not an indispensable party to the
5 case, of course, and it's not necessary to the
6 disposition of the case before the Court. And it
7 raises, we think, perhaps -- I say that guardedly
8 -- issues that are not raised in the pleadings.

9 And I don't think that generally that would
10 allow them to appear and participate in a full
11 fashion here in any event.

12 So until we have an opportunity to really
13 look at this, and I would want to raise those
14 points, which one thing we feel we have got to
15 move this case and this case will be determinative
16 in all probability of the election. And if we
17 start getting parties in that are raising
18 collateral issues that aren't involved in this
19 case between the parties that are really in
20 interest in this matter, Governor Bush and his
21 people and Vice-President Gore and all, I think it
22 would probably be counterproductive.

23 Now I don't want them not to have their
24 opportunity to say whatever it is they want to
25 say, but I would like to suggest that we very

1 guardedly suggest that what I said would be
2 appropriate in limiting this, and let us determine
3 if there is some way that they can file it,
4 whatever arguments they want or pleadings or
5 something; but let's keep the main issue between
6 the parties, which I think is the intent of the
7 rules.

8 THE COURT: I had some concern that if you
9 have so many intervenors and that's going to
10 create a lot of further perhaps duplication and
11 bringing extraneous issues.

12 I think what I am going to do at this time,
13 I am going to give a preliminary grant of their
14 motions to intervene, subject to any appropriate
15 motion to sever in the event it becomes apparent
16 that there are matters that are not germane and
17 perhaps might tend to impede the case between the
18 original parties.

19 MR. MADIGAN: Thank you, Your Honor.

20 MR. MYERS: Thank you.

21 THE COURT: So ordered. Prepare me an
22 order. You have now been designated, Mr. Myers,
23 as liaison for the intervenors. Submit me a
24 proposed order, if you will.

25 MR. MYERS: Yes, Your Honor.

1 THE COURT: Anything further? If not, then
2 this Court will stand adjourned subject to your
3 call.

4 (Proceedings concluded at 5:05 p.m.)
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CERTIFICATE OF REPORTER


STATE OF FLORIDA:

COUNTY OF LEON:

I, SANDRA L. DiBENEDETTO-NARGIZ, do hereby
certify that the foregoing proceedings were taken
before me at the time and place therein designated;
that my shorthand notes were thereafter translated
under my supervision; and the foregoing pages numbered
1 through 59 are a true and correct record of the
aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties,
nor relative or employee of such attorney or counsel,
or financially interested in the foregoing action.

DATED THIS 27TH DAY OF NOVEMBER, 2000.


SANDRA L. DiBENEDETTO-NARGIZ
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

November 28, 2000

**Emergency Motion to Commence Counting of Votes in Miami-Dade
& Palm Beach**

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

CASE NO.: 00-2808

FILED
00 NOV 28 PM 12:54
DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

EMERGENCY MOTION TO COMMENCE COUNTING
OF VOTES IN MIAMI-DADE AND PALM BEACH COUNTIES
PURSUANT TO BECKSTROM AND REQUEST FOR IMMEDIATE HEARING

Plaintiffs Albert Gore, Jr., as Nominee of the Democratic Party of the United States for President of the United States, et al., submit this Emergency Motion to Commence Counting of Votes in Miami-Dade and Palm Beach Counties in accordance with the procedure validated in *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720 (Fla. 1998) and requests an immediate hearing upon this motion. The following grounds support this motion.

1. This Court has the power and duty to direct immediately the counting of approximately 10,500 unrecorded votes in Miami-Dade County and 3,300 disputed ballots in Palm Beach County pursuant to Section 102.168(8), Florida Statutes (2000), as well as Fla.R.Civ.P. 1.610.

2. The duty of courts to require manual recounts is well-settled in Florida. *State v. Peacock*, 125 Fla. 810, 170 So. 309 (1936) (recount conducted under the "Order of this Court");

State v. Latham, 125 Fla. 788, 170 So. 472 (1936); *Hornsby v. Hilliard*, 189 So. 2d 361 (Fla. DCA 1966) (court-ordered recount).

3. In *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720, 722 (Fla. 1998), that trial court's responsibility was compellingly validated. In its analysis of the critical role of manual recounts of the disputed ballots – in that case, over 8,000 thousand absentee ballots – the Supreme Court of Florida said:

. . . appellant moved the court to order a manual recount of the absentee ballots. The court granted the motion, and the clerk of the circuit court conducted a re-count, which was observed by representatives for both candidates.

Thus, in *Beckstrom*, the power of the trial judge to direct manual recounting of disputed ballots was strongly endorsed by the Supreme Court of Florida – as was the decision by that Judge to direct the Clerk to execute that tabulation. *Beckstrom*, 707 So. 2d at 722.¹ In the present case, in which the Miami-Dade Canvassing Board simply stopped counting votes in the face of orchestrated intimidation that included screaming, door-poundings and physical assaults, the need for the judiciary to transcend mob action in Miami is clear and urgent.

4. That same evening, the Third District Court of Appeal ruled that because its recount "could affect the outcome of the election" the Miami-Dade Canvassing Board had a "mandatory obligation" to proceed with manual recounting. *Miami-Dade Democratic Party v. Miami Dade Canvassing Board*, Case No. 3D00-318 (Fla. 3d DCA, Nov. 22, 2000). Op. at 2-3. While denying mandamus to require completing the recount of 653,000 ballots prior to the November 26, 2000

¹ Manual recounts were overwhelmingly vindicated last week in *Palm Beach Canvassing Board v. Harris*, Nos. SC00-2346, SC00-2348 and SC00-2349 (Fla. Nov. 21, 2000).

certification, due to the lack of sufficient time, the denial was without prejudice to seeking relief elsewhere. In similar fashion, the Supreme Court of Florida denied mandamus without prejudice so that the manual recount obligations of the Miami-Dade Canvassing Board could be resolved "in any future proceedings."

5. This motion invokes, *inter alia*, the mandatory recount obligations that are now before this Court for enforcement. To remedy Miami-Dade's improper abdication of its legal responsibility, this Court has the duty to direct that a manual recount of the disputed votes be conducted by the clerk of the court – the result explicitly validated in *Beckstrom*.

6. Given the obvious and urgent exigencies that require the commencement of this count, we respectfully urge the Court not to delay in making any decision.

7. The single critical issue in this case is the counting of the contested ballots. That counting must commence now if this contest is to be resolved within the time set by the Supreme Court. In addition to the counting of 10,500 unrecorded ballots in Miami-Dade, manual recounting should be directed for the 3,300 disputed ballots in Palm Beach County. We propose three alternative ways for that count to commence.

(1) A count by the Circuit Court Clerk – In *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720, 722 (Fla. 1998), the Supreme Court approved a procedure whereby "the clerk of the circuit court conducted a re-count, which was observed by representatives of both sides." In the present case, such a count could be conducted either

(a) by the clerks of Miami-Dade and Palm Beach Counties (which would eliminate the delay and other issues raised by transferring the ballots to this Court), or

(b) by the Clerk of this Court.

(2) A count by other judges of the Circuit Court of Leon County pursuant to an order of this Court pursuant to Section 102.168(8). That provision – Section 102.168(8) – gives this Court broad powers to enter whatever orders are required to decide this contest within the time set by the Florida Supreme Court. Defendants have objected to Plaintiffs' proposal for the appointment by this Court of a Special Master, or Special Masters, to conduct the count on the ground that such a count is a judicial determination. Defendants can hardly object to the appointment of Circuit Court judges to conduct the count.

8. Either of these procedures would be acceptable to Plaintiffs. We ask that this Court hold an immediate hearing on this issue and, upon its completion, order that the count of the contested ballots begin immediately by whichever of these procedures the Court elects.

9. The urgent duty to resume recounting must be resolved by this Court forthwith. Section 102.168(7) creates an unequivocal affirmative duty for the court to hold an "immediate" hearing when there is an election contest. The Section provides: "Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing." The only discretion afforded to the court is in determining the amount of time for taking testimony. But even then, the court must ensure that the hearing is conducted with sufficient speed to resolve all of the necessary issues in a timely fashion.

10. As the court held in *Adams v. Canvassing Board of Broward County*, 421 So. 2d 34, 35 (Fla. 4th DCA 1982) regarding Section 102.168(7): "Part of the purpose of the protest and contest provisions of the election code is to effect a speedy resolution of such conflicts, with minimal disruption of the electoral process." This Court thus has the obligation to expedite the schedule and

conduct for the hearing to ensure that it is completed without risking any disruption to the electoral process.²

11. The duty to proceed forthwith with manual recounting is firmly anchored on Supreme Court of Florida precedent as old as *Peacock* and *Latham* and as new as the 1998 decision in *Beckstrom* and last week's ruling in *Harris*. It is further predicated upon the broad remedial powers in a contest action under Section 102.168(8), Florida Statutes (2000).

12. It is further premised upon Fla.R.Civ.P. 1.610 because the circumstances described herein, along with those set forth in the Complaint to Contest An Election and the Motion to Compel Counting of Votes, clearly establish: (a) irreparable harm; (b) lack of adequate remedy at law; (c) sufficient likelihood of success on the merits; and (d) compelling needs of the public for an immediate resolution of the disputed ballots.³

² In considering other Florida laws using the phrase "immediate hearing," courts have consistently held that this statutory command must be taken literally. For example, the Florida Public Records Act requires courts to provide an "immediate" hearing on actions under the law. (§119.11(1), Fla. Stat.: "Whenever action is filed to enforce the provisions of this chapter, the court shall set forth an immediate hearing, giving the case priority over all other pending cases.") In *Salvador v. Fennelly*, 593 So.2d 1091 (Fla. 4th DCA 1992), the court emphasized that the word "immediate" means what it says: prompt and urgent action is necessary. The city, whose denial of records was challenged, argued that Section 119.11(1) required only a hearing in a "reasonable time." The court, however, dismissed this argument as "patently unreasonable." *Id.* at 1093. The court declared: "The fact that the statutory mandate for an early hearing may be difficult to accommodate does not mean, however, it must not be done."

³ This Court's power to order immediate resumption of the manual recounting in this Section 102.168 contest proceeding is strongly supported by statements of the canvassing board itself which responded before the District Court on the issue of manual recounts and said:

Florida Statutes Section 102.168 provides just such a remedy, allowing a contest of the election results after the protests have been resolved and the returns certified. *See* §102.168, Fla. Stat.


(Canvassing Board Response, Nov. 22, 2000, at 7.)

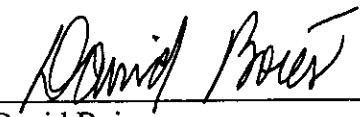
CONCLUSION

For the reasons set forth, Plaintiffs urge this Court to direct the immediate counting of disputed ballots in Miami-Dade and Palm Beach Counties.

Respectfully submitted this 28 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 28th day of November, 2000 to the following:

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November 28, 2000

Al Gore Motion to Expedite Hearing and Ballot Counting

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

CASE NO.: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

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DAVE LAUG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

MOTION TO ENTER EXPEDITED SCHEDULING ORDER

Plaintiffs, ALBERT GORE, JR., Nominee of the Democratic Party of the United States for President of the United States, et al. ("Plaintiffs"), move this Court to immediately enter the scheduling order attached hereto. Section 102.168, Florida Statutes, allows for a contest to be filed by any candidate. The right to contest an election is a fundamental right and an integral part of every citizen's right to have their vote counted. Plaintiffs allege:

1. The Supreme Court of Florida recognized the importance of that right in its opinion, *Palm Beach Canvassing Board v. Harris*, Nos. SC00-2346, SC00-2348 & SC00-2349 (Nov. 21, 2000).

2. All time frames in this contest are controlled by the Florida Supreme Court's December 12 deadline for certification before the Electoral College under the U. S. Constitution.

3. In order to comply with the decision of the Florida Supreme Court in *Palm Beach County Canvassing Board v. Harris, supra*, this Court must enter the attached order otherwise the Plaintiffs' right to a contest, and the opportunity to assure "an accurate vote count . . . one of the essential foundations of democracy." *Harris, supra*, at 34, will be denied.

4. The denial of a dramatically accelerated schedule could mean a denial of Plaintiff GORE's due process rights, and will in effect nullify the statutory right to a contest as held by the Florida Supreme Court in *Harris*.

5. The central and indispensable witness to these proceedings is the ballots. They must be manually counted without further delay. The Court or a Special Master must immediately begin that process.

6. In Miami-Dade County, approximately 10,500 unrecorded ballots need to be manually examined and counted. As of the time the canvassing board abandoned its duties on November 22, 2000, approximately 1,790 of those unrecounted ballots had been duly examined and manually counted, generating a net gain of at least 163 votes for Vice President Gore.

7. The Miami-Dade Canvassing Board had a "mandatory obligation" to manually recount all of the ballots in the county for the presidential election. *Miami-Dade Democratic Party v. Miami-Dade Canvassing Board*, Op. at 2-3. Nonetheless, because of the Florida Supreme Court's pre-certification deadline, the District Court of Appeal denied mandamus to compel completion of the count, and indicated that any pre-certification extension would have to come from the Supreme Court. When presented to the Supreme Court of Florida on November 23, that tribunal declined to act, without prejudice, directing resolution of this issue to a subsequent proceeding, i.e., the latest action before this Court.

8. In Palm Beach County, a return that reflected a net gain of at least 215 votes for Al Gore was rejected by the Secretary of State because it was not finished until 127 minutes after the 5:00 p.m. deadline. This rejection is contrary to the Supreme Court's decision in *Harris, supra*, at 33-34, which specified narrow grounds for rejecting returns. Any delay in this case will deny justice to the Plaintiff and those in Palm Beach County, who cast their ballots expecting their voices to be heard.

9. Plaintiffs have presented the expedited schedule to Defendants who objected to the schedule. Defendants' only goal in these proceedings is to have the Court delay the contest so that justice delayed will become justice denied – and thereby frustrating the principles of the Florida Constitution and Florida law, addressed by the Supreme Court in *Harris*.

10. Cognizant of the limited time available, Plaintiffs have brought a limited, focused contest. Plaintiffs' contest raises five discrete issues:

- (1) Which of the approximately 10,500 unrecorded Miami-Dade County ballots represent votes for Al Gore and Joe Lieberman, which represent votes for George W. Bush and Dick Cheney, and which are non-votes for President and Vice-President? Realistically, the determination of this question must be made, within the next few days, given the time needed to transport the ballots, with appropriate security, to a judicial officer and for that officer to make a proper review, counting and determination of this matter.
- (2) Whether it was lawful to reject and discard the additional votes that were manually counted and validated in Miami-Dade County prior to the time the County Canvassing Board opted to abandon its mandatory obligation to complete the

recount? This issue would need to be reached in the event the Court refuses to have the 10,500 unrecorded ballots counted. It should be finally resolved by December 6, 2000 to allow for time for appellate review.

(3) Should the 215 net additional votes for Gore/Lieberman resulting from the Palm Beach County Canvassing Board's manual recount be counted in determining which candidates received the most votes? This issue can be resolved summarily and, as above, must be addressed by December 6, 2000.

(4) Which of the approximately 3,300 contested Palm Beach County ballots represent votes for Gore/Lieberman, which represent votes for Bush/Cheney, and which are non-votes for President and Vice-President? This issue, like the need to proceed with manual recounting in Miami-Dade, should be reached no later than Wednesday, November 29, 2000, if the remedy is to be truly meaningful in light of immediate time constraints.

(5) Does the original election night tabulation of votes or the subsequent machine recount tabulation of votes in Nassau County constitute the votes to be counted in determining which candidates received the most votes? Once again, this issue should be determined no later than December 6, 2000.

11. Each of the foregoing questions is largely or entirely a question of law. Each of the foregoing questions is indisputably a question for judicial, as opposed to administrative, resolution. Each of these questions can be resolved on the basis of undisputed facts, or on the basis of physical facts (e.g., whether or not there is an indentation on a ballot) within the court's personal observation.

12. Plaintiffs respectfully urge that all parties to this proceeding have an obligation to act such that this court can enter its judgment on the foregoing questions with sufficient time for the Supreme Court to review that judgment and render its decision before December 12, 2000. Plaintiffs also respectfully urge that the minimum time that responsibly needs to be reserved for Supreme Court review and decision is three days. This means that this Court must render its final decision on all pending issues no later than the close of business December 6, 2000 – eight days from this morning. Other determinations, such as the counting of some 10,500 unrecorded ballots in Miami-Dade County and the 3,300 votes in Palm Beach County, should be reached immediately.

13. Section 102.168(7) creates an unequivocal and affirmative duty for the court to hold an "immediate" hearing when there is an election contest. The Section provides: "Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing." The only discretion afforded to the court is in determining the amount of time for taking testimony. But even then, the court must ensure that the hearing is conducted with sufficient speed to resolve all of the necessary issues in a timely fashion. As the court, speaking of Section 168(7), Florida Statutes observed in *Adams v. Canvassing Board of Broward County*, 421 So. 2d 34, 35 (Fla. DCA 4th 1982): "Part of the purpose of the protest and contest provisions of the election code is to effect a speedy resolution of such conflicts, with minimal disruption of the electoral process." This court thus has the obligation to expedite the schedule and conduct for the hearing to ensure that it is completed without risking any disruption to the electoral process.

14. Thus, the dictate in Section 102.168(7) for an "immediate" hearing must be taken literally. The hearing must be scheduled in the shortest possible time. Indeed, in considering other

Florida laws using the word "immediate," courts have consistently held that this creates a duty for prompt and urgent action.

15. Here, of course, time is truly crucial in obtaining relief under Section 102.168, Florida Statutes. The Supreme Court of Florida has held that all proceedings in this matter must be concluded no later than Tuesday, December 12. Therefore, proceedings must be moved forward immediately to ensure that they are completed on time. Any delay risks undermining the central purpose of Section 102.168: ensuring prompt and effective adjudication of conflicts as to balloting and counting procedures. *McPherson v. Flynn*, 397 So. 2d 665, 668 (Fla. 1981).

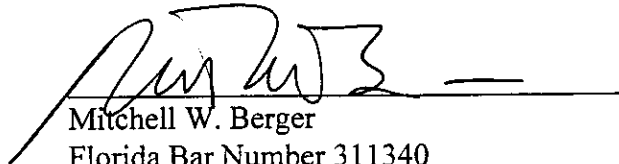
16. In construing Section 102.168, "the judge should bear in mind that the primary consideration in such a contest is whether the will of the people has been effectuated." *Flack v. Carter*, 392 So. 2d 37, 40 (Fla. 1st DCA 1981). Effectuating the will of the people requires that the hearings on the contests in this presidential election begin immediately, exactly as prescribed in the statute. Any delay risks undermining the law providing for adjudication of conflicts and, most important, the ability of the courts to effectuate the will of the people.

17. Although the proposed schedule is compressed, it is feasible. Circuit courts in other related cases have acted as fast or faster, and the Supreme Court has ensured that the time elapsed between filing a petition in circuit court and a Supreme Court decision has been seven days or less. We are, of course, aware of the burdens that litigation of this importance and pace have imposed on other circuit courts and the Supreme Court, and now imposes on this court. However, expedition is required in order to prevent the most basic right in our democracy from being abridged by delay alone. Failure to adopt the accompanying schedule, or a more expedited schedule, is tantamount to denial of Plaintiffs' contest.

18. Accordingly, Plaintiffs request the scheduling order be entered immediately, that a hearing on this request be held as soon as its Court's schedule permits, and that all contested ballots be manually counted starting at 9:00 a.m., November 29, 2000.

Respectfully submitted this 20 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



Mitchell W. Berger
Florida Bar Number 311340
Berger Davis & Singerman
215 South Monroe Street, Suite 705
Tallahassee, Florida 32301
Telephone: 850/561-3010
Facsimile: 850/561-3013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 20 day of November, 2000 to the following:

Barry Richard
Greenberg Traurig
101 East College Avenue
Tallahassee, FL 32301
for Governor Bush

Deborah Kearney, General Counsel
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Tallahassee, FL 32399
for Secretary Katherine Harris and
the Elections Canvassing Committee

Donna E. Blanton
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Tallahassee, FL 32301-1804
for Secretary Katherine Harris and
the Elections Canvassing Committee

Tucker Ronzetti
Assistant County Attorney
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Ben Ginsburg
State Republican Headquarters
420 West Jefferson Street
Tallahassee, FL 32301
for the Republican Party

Craig Meyer
Florida Department of Agriculture and
Consumer Services
The Capitol, Plaza Level 10
Tallahassee, FL 32399-0800

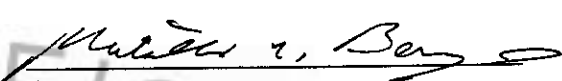
Andrew McMahon
Palm Beach County Attorney Office
301 N Olive Avenue, Suite 601
West Palm Beach, FL 33401-4705
for Palm Beach Canvassing Board

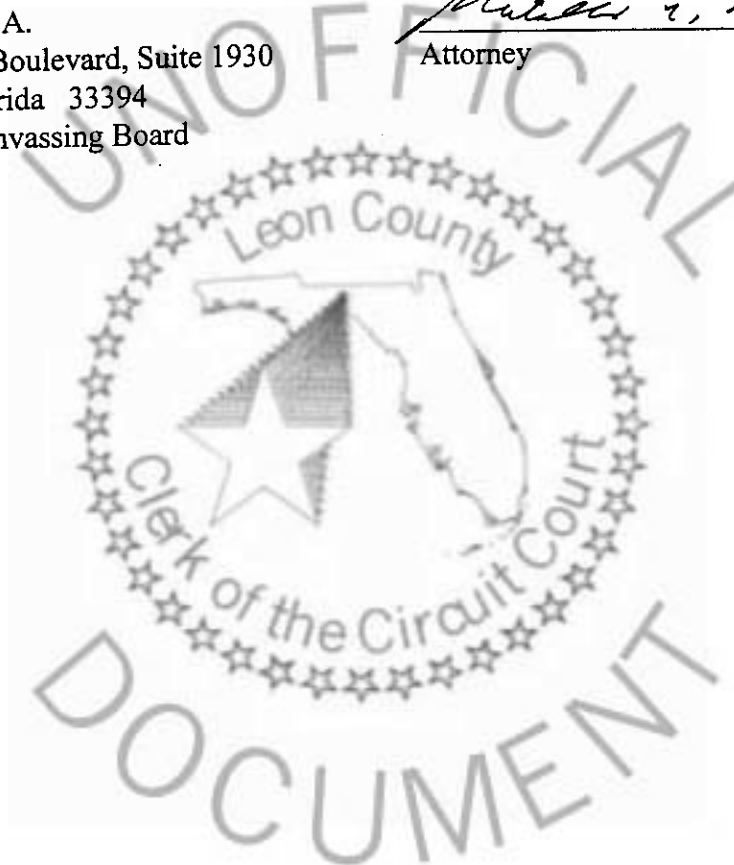
Bruce Rogow
Bruce S. Rogow, P.A.
500 East Broward Boulevard, Suite 1930
Ft. Lauderdale, Florida 33394
for Palm Beach Canvassing Board

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for Nassau County Canvassing Board

Terrell C. Madigan
Harold R. Mardenborough, Jr.
McFarlain Wiley Cassidy & Jones
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Tallahassee, Florida 32301
for Intervenor Named West Florida Voters

R. Frank Myers
Messer Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301


Attorney



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

CASE NO. 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

ORDER DIRECTED TO ALL PARTIES REGARDING SCHEDULING

This cause came before this court on the parties' request for a
scheduling order to facilitate the timely and efficient resolution of this cause.

After due consideration, it is

ORDERED AND ADJUDGED that the parties shall immediately and
fully comply with the attached schedule of all proceedings in this matter.

Done and Ordered in Tallahassee, Leon County, Florida, this ____ day
of November 2000.

N. Sanders Sauls
Circuit Judge

Copies furnished to all counsel of record



NOV / DEC EXPEDITED TRIAL CALENDAR

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
26 Certification	27 Contest Filed 4 pm Hearing	28 Witness List Served Order/Hearing on Schedule and Delivery of Ballots	29 Ballots Received Ct Review of Contested Ballots Begins Discovery	30 Responsive Pleadings Due Ct Review of Contested Ballots Cont. Discovery	1 Ct Review of Contested Ballots Cont. Discovery	2 Ct Review of Contested Ballots Cont. Discovery
3 Ct Review of Contested Ballots Cont. Discovery	4 Evidentiary Hearing Ct Review of Contested Ballots Discovery	5 Evidentiary Hearing Ct Review of Contested Ballots Discovery	6 Findings of Fact and Conclusions of Law Possible Notice of Appeal	7 Simultaneous Exchange of Appellants' and Appellees' Briefs	8 Florida Supreme Court Hearing	9 Florida Supreme Court Order
10	11	12	13	14	15	16

November 28, 2000

**George W. Bush Motion Transfer All Ballots from Miami-Dade &
Palm Beach**

GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

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POST OFFICE BOX 11189

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E-MAIL ADDRESS

November 29, 2000

The Honorable N. Sanders Sauls
Leon County Circuit Court Judge
301 South Monroe Street
Tallahassee, Florida 32301

In Re: *Gore et al v. Katherine Harris, et al.*
Leon County Circuit Court Case No.: 00-2808

Dear Judge Sauls:

During yesterday's hearing, the Court yesterday expressed a preference for expedited discovery. To that end, Defendants, Governor George W. Bush and Dick Cheney, nominees of the Republican Party of the United States for President and Vice President of the United States, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, have requested that David Leahy, in his capacity as Supervisor of Elections for Miami-Dade County, and Theresa LePore, in her capacity as Supervisor of Elections for Palm Beach County, produce all ballots cast in the General Election of November 7, 2000, in Miami-Dade and Palm Beach Counties.

Defendants believe that fairness requires, at a minimum, that if the ballots in Miami-Dade or Palm Beach Counties requested by Plaintiffs are produced, Defendants should be permitted to discover *all* of the ballots from those two counties. Many ballots that were subject to dispute during the manual recounts were not segregated into the limited category of ballots of which Plaintiffs now seek production. Thus, discovery should not be limited only to the ballots requested by Plaintiffs.

We are aware that the Court has directed the Canvassing Boards in Miami-Dade and Palm Beach Counties to produce certain ballots requested by Plaintiffs from each of these counties to this Court by Friday, December 1. In the interests of fairness and efficiency, Defendants request that the Court order the Canvassing Boards to respond to Defendants' requests for production of ballots at the same time that they respond to the requests filed by Plaintiffs.



MELBOURNE

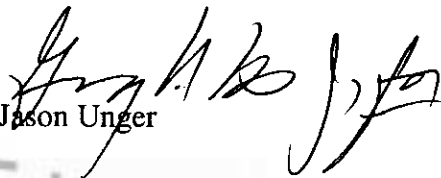
ORLANDO

TAMPA

Further, to ensure that all ballots are treated uniformly, Defendants request that the ballots produced by Miami-Dade and Palm Beach Counties be transported to the Court together with, at the same time, and in the same manner as the ballots produced in response to Plaintiffs' request.

We recognize that, in light of pending requests by the public to review the ballots, the Palm Beach County and Miami-Dade County Canvassing Boards have asked the Court to issue an order directing the Boards to produce and deliver the ballots to the Court. Therefore, in order to ensure that *all* the ballots potentially necessary to this proceeding are promptly and efficiently delivered to the Court, we respectfully ask that you issue the attached order and forward it to the Canvassing Boards together with those orders you requested yesterday regarding the ballots requested by the Plaintiffs.

Respectfully,


Jason Unger

cc: all counsel



**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION**

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

CASE NO: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL,

Defendants.

ORDER

WHEREAS, Plaintiffs in this matter previously requested production of certain ballots cast in Palm Beach County and Miami-Dade County in the General Election of November 7, 2000; and

WHEREAS, this Court has ordered the Canvassing Boards of Palm Beach County and Miami-Dade County to produce such ballots by Noon on Friday, December 1, 2000; and

WHEREAS, Defendants George W. Bush and Dick Cheney have requested production of all ballots in those two Counties; and

WHEREAS, the Court is aware of outstanding requests for public inspection of such ballots in Palm Beach County and Miami-Dade County;

THEREFORE, the Court hereby orders the Palm Beach County Canvassing Board and the Miami-Dade County Canvassing Board to produce all ballots cast in Palm Beach County and Miami-Dade County in the General Election of November 7, 2000, to the Court at the same time, and together with, the ballots produced pursuant to Plaintiffs' request for production of ballots.

Judge N. Sanders Sauls

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

CASE NO: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL,

Defendants.

**REQUEST FOR PRODUCTION OF BALLOTS TO DAVID LEAHY IN HIS
CAPACITY AS SUPERVISOR OF ELECTIONS FOR MIAMI-DADE COUNTY**

Defendants Governor George W. Bush, nominee of the Republican Party of the United States for President of the United States in the 2000 General Election, and Dick Cheney, nominee of the Republican Party of the United States in the 2000 General Election, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, hereby make the following Request for Production:

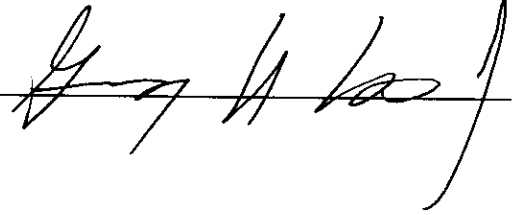
That David Leahy, in his official capacity as Supervisor of Elections for Miami-Dade County, Florida, produce for inspection to the Circuit Court of Leon County, Florida, the following:

1. All ballots cast in Miami-Dade County for the general election held on November 7, 2000.

You are requested to submit the requested ballots to the Court together with the ballots already requested by Plaintiffs Al Gore, Jr. and Joseph I. Lieberman on November 27, 2000 and ordered produced by the Court.

Respectfully submitted November 29, 2000.

By:



Fred H. Bartlit, Jr.
Philip Beck
BARTLIT BECK HERMAN
PALENCHAR & SCOTT
1899 Wynkoop Street, 8th Floor
Denver, CO 80202
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Barry Richard
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101 East College Avenue
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Telephone: (850) 222-6891
Facsimile: (850) 681-0207

Jason L. Unger
Florida Bar No. 991562
George N. Meros, Jr.
Florida Bar No. 263321
GRAY, HARRIS & ROBINSON
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Irvin G. Terrell
BAKER BOTTS, L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
Telephone: (713) 229-1234
Facsimile: (713) 229-1522



CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November 2000, a true and correct copy of the foregoing Request for Production of Ballots to David Leahy, in his capacity as Supervisor of Election in Miami-Dade County, was served by ~~hand~~ delivery to:

Mitchell W. Berger
Florida Bar Number 311340
Berger Davis & Singerman
215 South Monroe Street, Suite 705
Tallahassee, Florida 32301
For Albert Gore, Jr. and
Joseph I. Lieberman



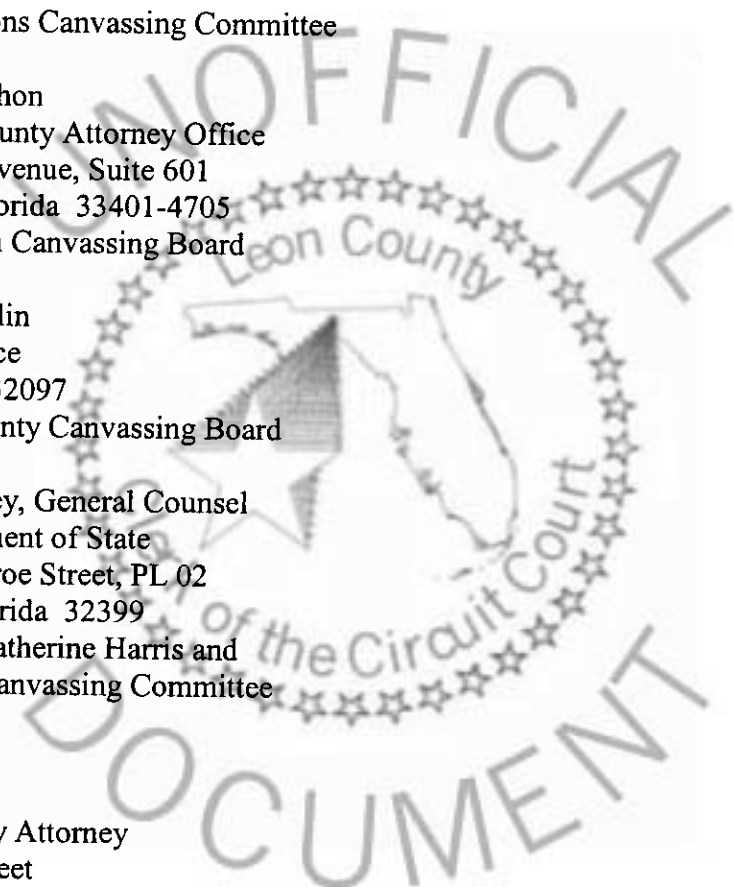
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Tallahassee, Florida 32301-1804
Fr Secretary of State Katherine Harris
And the Elections Canvassing Committee

Andrew McMahon
Palm Beach County Attorney Office
301 N. Olive Avenue, Suite 601
Palm Beach, Florida 33401-4705
For Palm Beach Canvassing Board

Michael S. Mullin
191 Nassau Place
Yulee Florida 32097
For Nassau County Canvassing Board

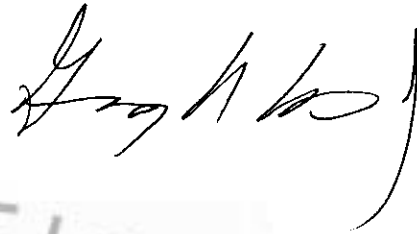
Deborah Kearney, General Counsel
Florida Department of State
400 South Monroe Street, PL 02
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For Secretary Katherine Harris and
The Elections Canvassing Committee

Tucker Ronzetti
Assistant County Attorney
111 N.W. 1st Street
Miami, Florida 33130
For Miami-Dade County Canvassing Board



Harold McLean, Senior Attorney
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515 Mayo Building
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Tallahassee, Florida 32399

Bruce Rogow
Bruce S. Rogow, P.A.
500 East Broward Boulevard, West
Suite 1930
Ft. Lauderdale, Florida 33394
For Palm Beach Canvassing Board



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

CASE NO: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL,

Defendants.

**REQUEST FOR PRODUCTION OF BALLOTS TO THERESA LEPORE IN HER
CAPACITY AS SUPERVISOR OF ELECTIONS FOR PALM BEACH COUNTY**

Defendants Governor George W. Bush, nominee of the Republican Party of the United States for President of the United States in the 2000 General Election, and Dick Cheney, nominee of the Republican Party of the United States in the 2000 General Election, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, hereby make the following Request for Production:

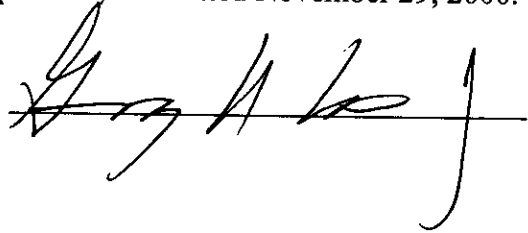
That Theresa LePore, in her official capacity as Supervisor of Elections for Palm Beach County, Florida, produce for inspection to the Circuit Court of Leon County, Florida, the following:

1. All ballots cast in Palm Beach County for the general election held on November 7, 2000.

You are requested to submit the requested ballots to the Court together with the ballots already requested by Plaintiffs Al Gore, Jr. and Joseph I. Lieberman, on November 27 2000 and ordered produced by the Court.

Respectfully submitted November 29, 2000.

By:

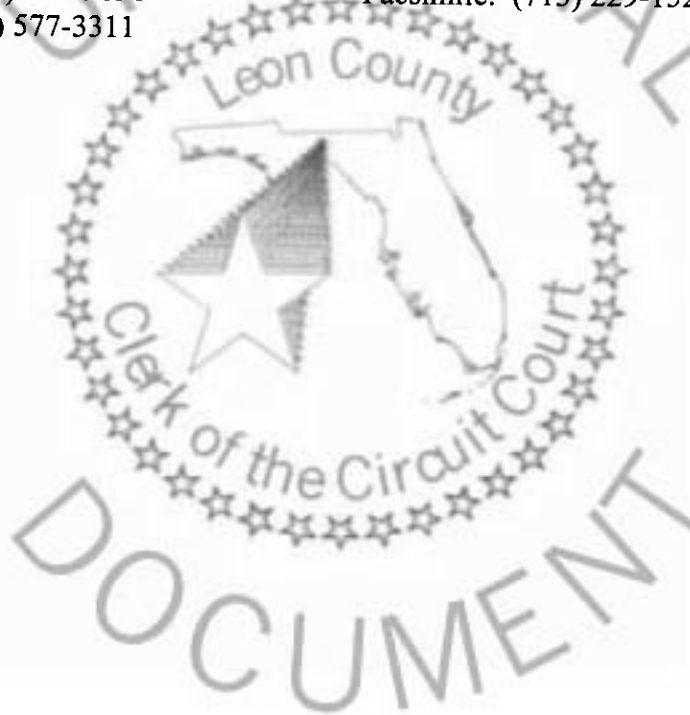


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Daryl B. Bristow
Irvin G. Terrell
BAKER BOTTS, L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
Telephone: (713) 229-1234
Facsimile: (713) 229-1522



CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November 2000, a true and correct copy of the foregoing Request for Production of Ballots to Theresa LePore in her official capacity as Supervisor of Elections for Palm Beach County, Florida, was served by hand delivery to:

Mitchell W. Berger
Florida Bar Number 311340
Berger Davis & Singerman
215 South Monroe Street, Suite 705
Tallahassee, Florida 32301
For Albert Gore, Jr. and
Joseph I. Lieberman

Donna E. Blanton
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301-1804
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Andrew McMahon
Palm Beach County Attorney Office
301 N. Olive Avenue, Suite 601
Palm Beach, Florida 33401-4705
For Palm Beach Canvassing Board

Michael S. Mullin
191 Nassau Place
Yulee Florida 32097
For Nassau County Canvassing Board

Deborah Kearney, General Counsel
Florida Department of State
400 South Monroe Street, PL 02
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Tucker Ronzetti
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Bruce Rogow
Bruce S. Rogow, P.A.
500 East Broward Boulevard, West
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Ft. Lauderdale, Florida 33394
For Palm Beach Canvassing Board

Ly H B



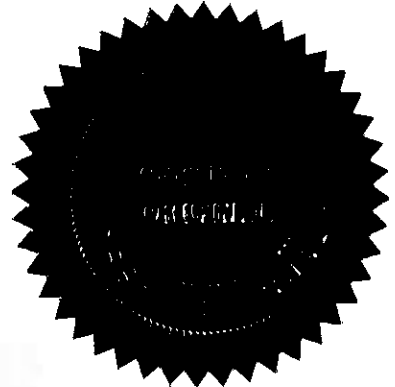
November 28, 2000
Transcript of Hearing

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA.

ALBERT GORE, JR., et al.
Plaintiffs,

CASE NO. 00-2808

vs.
KATHERINE HARRIS, as Secretary
of State, STATE OF FLORIDA, et al.,
-and-
THE MIAMI-DADE COUNTY CANVASSING
BOARD, et al.
-and-
THE NASSAU COUNTY CANVASSING
BOARD, et al.,
-and-
THE PALM BEACH COUNTY CANVASSING
BOARD, et al.,
-and-
GEORGE W. BUSH, et al.,
Defendants.



IN RE: Hearing
BEFORE: HONORABLE SANDRA S. SAUL
DATE: Tuesday, November 10, 2003
TIME: Commenced: 5:30 p.m.
Concluded: 7:20 p.m.
LOCATION: Courtroom 3D
Leon County Courthouse
Tallahassee, Florida
REPORTED BY: LIZ CLEARY, CCR
Notary Public in and for
State of Florida at Large

00 DEC 15 PM 4:38
FILED
CLERK OF THE CIRCUIT COURT
LEON COUNTY, FLORIDA

ASSOCIATED COURT REPORTERS

519 East Park Avenue • Tallahassee, Florida 32301 • (850) 222-5508

A Realtime Reporting Firm — Instant Translation



APPEARANCES:

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MITCHELL BERGER, ESQUIRE
GARY RUTLEDGE, ESQUIRE
FRANK MYER, ESQUIRE

Representing the Defendants:

JOSEPH KLOK, ESQUIRE
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Representing Nassau County Canvassing Board:

MIKE MULLIN, ESQUIRE (Via Speakerphone)

Representing West Palm Beach County Canvassing Board:

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Representing Miami-Dade County Canvassing Board:

MURRAY GREENBURG, ESQUIRE (Via Speakerphone)

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PROCEEDINGS

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2 THE COURT: Good evening, I apologize for the delay.
3 We had another hearing that could not be shortened. We'll
4 call up at this time, this is the case of Albert Gore, Jr.,
5 et al. v. Katerhine Harris, the Secretary, State of Florida,
6 et al., Case Number 2000-2808. We have all the usual
7 suspects. Have you already entered your appearance with the
8 reporter?

9 MR. GREENBURG: Your Honor, I would just like to add,
10 this is Murray Greenburg from Miami, telephonically,
11 representing the Miami-Dade Canvassing Board.

12 THE COURT: All right, they had your note. And there
13 was someone else appearing telephonically at the prior
14 hearing.

15 MR. McMAHON: Your Honor, West Palm Beach,
16 Andrew McMahon for the West Palm Beach County Canvassing
17 Board.

18 THE COURT: Is there anyone else?

19 MR. MULLIN: Your Honor, from Nassau County,
20 Mike Mullin, representing the Nassau County Canvassing
21 Board.

22 THE COURT: At this time, it's my recollection that we
23 had the scheduling hearing on Monday, and we fashioned a
24 preliminary expedited schedule. Because of that, we had a
25 contingency. And, apparently, I note that it's my

1 recollection, the order was the ruling which was effective
2 from the bench, that we had the period of time for the
3 response, and that was to be triggered by the initial
4 delivery by the Plaintiffs of the list of witnesses and
5 exhibits expected to be introduced into evidence.

6 I received a filing that had been done, so that
7 automatically triggered the increase by one day, or the
8 shortening of one day of the other times, which would have
9 been the times moving a time for answer or response from
10 Friday, December 1st, to Thursday the 30th, and at the same
11 time the delivery of the Defendants' additional witnesses
12 and exhibits.

13 And, so, apparently, that's where we are. Maybe we're
14 in need of fine tuning the schedule. And we had other
15 matters that were dependent upon, principally, among other
16 things, and you can confer exactly on the specifics of which
17 ballots, what ballots, if any. It was recognized that the
18 Circuit Court of Palm Beach County -- or the Circuit Court
19 in and for Palm Beach County had entered an order with
20 respect to their particular ballots, and some appropriate
21 order was going to have to be obtained from that Court.

22 This Court doesn't have any jurisdiction to supersede
23 the order of the Palm Beach Court. I don't know if anything
24 has been done in that regard in the interim. It's my
25 recollection that Dade was not subject to any outstanding

1 court order, but sought instructions with respect to its
2 request for production which had been received.

3 And, finally, the parties were requested to confer,
4 and any additional and further relief was dependent upon the
5 parties having that opportunity, since it was represented
6 that there had been no such opportunity subsequent to the
7 hearing on Monday, and perhaps any potential agreements.

8 Since that time, I've heard of no agreements. I have
9 a much moving file of further filings, and I wonder if I
10 might inquire initially, have you attempted to confer and
11 have there been any matters at all? Has anybody even been
12 able to agree on the time of day?

13 MR. DOUGLASS: Yes, sir, we agree that it's 20 minutes
14 to six.

15 THE COURT: But that's the extent of it?

16 MR. DOUGLASS: Yes.

17 THE COURT: I suppose, initially, do you want to
18 discuss the status of the trial schedule?

19 MR. DOUGLASS: Your Honor, with the Court's
20 permission, we have filed with the Court and furnished to
21 the other parties in the case a proposed expedited schedule,
22 and also a motion, an emergency motion to commence the
23 counting of the votes in Miami-Dade and Palm Beach Counties
24 pursuant to the Bextrum case and others.

25 First of all, I would like to deal with the expedited

1 trial calendar that we've suggested and point out the dates.

2 Does Your Honor have a copy of the schedule that we proposed
3 that was attached to our motion?

4 THE COURT: Yes, sir.

5 MR. DOUGLASS: If we could refer to that, we started
6 on Sunday, that day is gone, the 26th. Yesterday is gone.

7 THE COURT: The 26th wasn't on my meter.

8 MR. DOUGLASS: I'm not blaming this on anybody, I'm
9 just saying how close we are to not being able to have this
10 case decided. Sunday is gone. Monday is gone. Today is
11 gone. We did get the matter moving by filing the matters
12 that we were supposed to.

13 On Wednesday we proposed that the ballots be received
14 in accordance with our emergency motion and that the Court
15 review of contested ballots begin. Discovery can be, if
16 necessary, going along with this.

17 On Thursday, the responsive pleadings are due, then
18 the Court can continue the contested ballot review and
19 discovery. Then Friday we can continue the contested ballot
20 review with discovery, the same on Saturday, and then on
21 Sunday. Then we have an evidentiary hearing next Monday,
22 and the Court can continue, or however it is being done, the
23 contested ballots, and continue the evidentiary hearing
24 until Tuesday.

25 And then on Wednesday we propose that the Court make

1 findings of fact and conclusions of law, and then there
2 would be a possible notice of appeal for either party or all
3 parties at that point. That's the 6th of December. I like
4 that day, because it's my 71st birthday and I'm still alive,
5 sort of.

6 But the 7th, which is Pearl Harbor Day, if we do have
7 a notice of appeal, there would be simultaneous exchange of
8 appellant's and appellee's briefs. We will be in the
9 Florida Supreme Court on Friday the 8th for a hearing, and
10 we hope for a Florida Supreme Court order on the 9th.

11 That gives the Court very few days, the Supreme Court,
12 to deal with this matter before the 12th. If this matter is
13 not concluded before the 12th, then we are running into a
14 situation that it was not anticipated we would run into by
15 the Court, the Supreme Court, when it entered its decision
16 which caused all of this to be kicked off eventually.

17 So we feel in order to do anything that is meaningful
18 and to have the Supreme Court have at least some time, and
19 they are familiar with all the facts in this case, except
20 what we develop in this record, and they know the issues and
21 they know the pressures that are involved in getting this
22 matter decided by the judiciary of the State of Florida so
23 that it will be decided in a manner in which the electors
24 can then be selected.

25 There are obvious reasons for why we are concerned

1 with this. I think we're seeing here by some of the
2 proposals being made, which we've gone to the 13th in this
3 Court, or to the 10th or 11th, somewhere in there. That
4 means if it stays in this Court that long, the Supreme Court
5 is just not going to have an opportunity to rule on whatever
6 is before it as a result of this contest, which we're
7 entitled to have under the statutes and the law.

8 I think, Your Honor, it's easier to cause delay than
9 it is to move a case. We all know that from many years of
10 experience. If you want to delay something, it's easier to
11 do it, it's easier to put it off, and particularly in court
12 proceedings. Because if you have skillful advocates, if
13 it's to the advantage of a client, and he insists, obviously
14 you can legally, and perhaps ethically delay, and delay as
15 long as you can to keep a decision from being made when your
16 clients want it put off.

17 It's much easier to do that than it is to make
18 something happen so a resolution can be done. In this case,
19 it's far easier for the attorneys who are not responsible
20 for moving the case, in this case, the attorneys for
21 Governor Bush, and for the allied people, Secretary Harris'
22 side, to put obstacles in the path of a final and fair
23 resolution of this matter until December 12th is here and
24 upon us, and then we're there, than it is for our client to
25 obtain and move the case for a final, full, and accurate

1 count that the people and he deserves, as well as the voters
2 of Florida.

3 Whoever wins is not material to my argument.
4 Obviously we think and hope that the Vice President, when
5 they count these votes, will be the winner in Florida. But
6 we don't know that until they are counted, and neither does
7 anybody else. I see where people just seem to assume, if
8 you count these votes, our client wins. If you don't count
9 them, let's hold them off, our client loses. The country
10 loses if we hold this off.

11 The only fair thing to do, Your Honor, and we urge the
12 Court to do it, is to move this on this schedule or one that
13 gives the time to take this case to the Supreme Court, file
14 the briefs, have it heard, and have them make the final
15 decision on this before the 12th, and then that is the only
16 way we can do this and obtain the final result that will
17 reflect the will of the entire voters of the
18 State of Florida.

19 We're asking the Court to make something happen and
20 for us not to become sort of an unwitting or unwilling party
21 to any kind of delay or tactics of delay, and we know the
22 Court likes to get cases moved and get them decided and
23 moved on to wherever they have to go. I don't think
24 anybody, including Your Honor, thinks that this is the final
25 stop if we can get a final decision. It's going to the

1 Supreme Court, and there we will be.

2 That's the basis for our motion, to move this
3 expedited schedule in order. We're not asking for anything
4 that can't be done, because we've been involved in a
5 situation in the Supreme Court where it was done. We did
6 something this quickly on a much less -- we weren't as
7 familiar with it, for one thing, when we went up there as
8 all of us are now, including the Court.

9 It's kind of like a football game. It's easier to
10 drag around and get back to the line of scrimmage if you are
11 on the defense trying to kill the clock than it is to get
12 everybody lined up. They do that, and that happens all the
13 time. So it's easier to kill the clock than it is to move
14 the ball. We need to move the ball, and the referee should
15 keep the game going and make them get off the ground or
16 throw a penalty flag.

17 In this case, this is not a schedule that can't be
18 met. I have heard where they have added a bunch of lawyers
19 to their trial team. I might suggest it's been mine
20 experience, when you start adding lawyers, you have a hard
21 time getting your job done, because you have more people
22 stirring the pot. That is there problem, not ours.

23 In any event, we cannot do anything but urge this
24 Court, in the best interest of the nation, to move this case
25 to a final resolution. But to do that, Your Honor, we have

1 to bring into play the statutes which give a right to the
2 manual recount or the recount of contested votes. This is
3 an election contest.

4 As Your Honor knows, it's an entirely different matter
5 than anything that has been before the courts before. It
6 does require that the candidate who is contesting has a
7 right to have those votes counted in this situation, because
8 they will affect the outcome of the election, in all
9 probability. They might not, but they most probably will
10 one way or the other.

11 For example, I think we know from this record that
12 there were 215 Palm Beach County votes that were counted and
13 rejected by the Defendant Harris. They were 127 minutes
14 late, two hours and seven minutes. They were cut off.
15 That's probably, we think, contrary to the spirit and to the
16 case law of Florida, to apply a technical time like that to
17 cut off validly counted votes. That was 200 net votes
18 gained. That is not 200 more, that's 215 votes. But that
19 many votes are standing there rejected from the final tally
20 at this point.

21 There are 162 Dade County votes that were counted but
22 not certified under the direction of the Defendants, and
23 those were net Gore votes. There is 51 in Nassau County, I
24 think that figure may be right, I've always been a little
25 confused whether it's 50, 51, or 52, but they were votes

1 that were not hand recounts. As I understand it, those
2 votes, the board met and they changed their previous
3 certification by subtracting the amount of votes, 51 votes
4 that were added to the net amount of Vice President Gore on
5 the machine recount, the statutory required recount.

6 We think that is a case that almost doesn't require
7 much at all, if that is, in fact, shown in the record that
8 that did occur. There are other things that occurred in
9 Nassau County that we think makes that invalid, as well,
10 such as a meeting in which they elected a new member who had
11 been a candidate and lost, or was in the election, and under
12 the statute, they cannot be a member of the Canvassing
13 Board.

14 That night they met and elected this person to the
15 Canvassing Board that had run and lost, or been a candidate
16 in that election. That is contrary to law. That is,
17 approximately, 438 or something net votes that would be
18 added to the count, net count, in favor of our client.

19 So it's kind of odd that we couldn't get anybody to
20 agree to any kind of extension any time anywhere, and they
21 come along and for just 127 minutes they threw out 215 net
22 votes in favor of Mr. Gore. That should be corrected by the
23 Court, as well.

24 Now, the importance of counting these votes that are
25 left out there, not these, but others, is that people who

1 have voted in Florida, particularly, are entitled by the
2 Constitution not only to vote, but to have their vote
3 counted and become a part of whatever happens.

4 The laws, since the 1800s, have always been in favor,
5 the interpretations, of interpreting the intent of a voter
6 where there is some doubt. Even on a paper ballot, going
7 way back to then, you interpreted it, and if you could find
8 the intent of a voter from looking at it, that vote was
9 counted and not thrown away, and essentially that's what we
10 have here.

11 I want to suggest that in our motion for an emergency
12 motion to commence counting, we suggested to the Court
13 several ways that that can be done, or at least two or
14 three. In Bextrum, the Judge in that case, on his own
15 motion, as I understand it, I was told that by the
16 participants in the case, the Judge in that case appointed
17 the Clerk of the Court to hand count the votes, or count the
18 votes in that case. And that case involved an alleged
19 fraudulent absentee vote. But he had the votes impounded
20 there and had his Clerk of the Circuit Court count them.

21 That is an alternative here. Or the Court could
22 appoint the Clerks in the counties where these are and have
23 them counted there without even bringing them up here. They
24 could have this counted in Palm Beach and Dade by the Clerks
25 of those Courts, or by Judges that this Court might appoint

1 that could do the same thing.

2 But we're entitled to a judicial recount, not a
3 recount by people that don't have some judicial connection.
4 These people, even if they be the clerk or otherwise, are
5 under your supervision, and if there is a dispute on some of
6 the votes, then the Judge, in this case Your Honor, would be
7 available to decide those issues by his own ruling. Then we
8 would have a record that would be involved for everybody for
9 all time.

10 I heard it said that whether we do this judicially and
11 determine it now before the time for the game is really
12 fritted away or gone, that somebody, and they are already
13 starting to do it, is going to count these votes, and it's
14 going to be a bad result if it turns out differently than
15 what is certified to the election of the President. We
16 don't want that to happen.

17 We have tried, at least on our side, and I think, for
18 the most part, the attorneys representing the other parties
19 have certainly tried to keep this matter on the legal issues
20 involved, and that's the way it should be. And we have
21 urged all of those that are on our side of the case to try
22 to avoid inflammatory remarks, criticizing courts,
23 criticizing other people, and to keep our eye on the ball to
24 get the ball to the end of the game. We will still continue
25 to do that.

1 I would like to request that my co-counsel address the
2 emergency motion in a little more detail than me because
3 he's much more prepared on that, plus he may have a few
4 remarks about the other motion, with the Court's permission.

5 THE COURT: However you wish to proceed. We're
6 dealing with trying to finalize some expedited trial
7 calendar, and if there is anything related to that, rather
8 than getting off into the other motion that I had, when that
9 time comes, I will ask what the difference is between this
10 motion and the motion I had that was up here the other day.
11 I already ruled we were going to have to hold on that motion
12 until we got the issues joined here.

13 And I think, automatically, with that built in
14 expediter, once your list of exhibits and witness lists came
15 in, that automatically shortened the other time, and it
16 shortened it from four to three days. It gets us closer to
17 having the issues joined.

18 And I'm just looking at your schedule, and anything
19 else I suppose your co-counsel wants to comment on on this,
20 I would think maybe we ought to do that first. Stay focused
21 on this, and then let me hear from the other side, or, if
22 you wish to have them go ahead and proceed, then I will hear
23 him --

24 MR. DOUGLASS: I would prefer him to go ahead on that
25 basis.

1 THE COURT: You may proceed.

2 MR. BOIES: They can proceed. I agree with the Court
3 that the right thing to do is to deal with the expedited
4 motion, first, and then we can come back to the motion on
5 counting.

6 THE COURT: Very well.

7 MR. BERGER: Would this be helpful? Whatever you want
8 to do. This is the calendar. Where would you like it?

9 THE COURT: Maybe that might be helpful for someone
10 else, but I believe that is just a reproduction of what I
11 have here.

12 MR. BERGER: That would be fine, Your Honor.

13 THE COURT: I didn't want to show you all my markings
14 on this. I have that. If it's convenient for anybody else,
15 by all means, go ahead.

16 MR. KLOK: Your Honor, Joe Klok, Steel, Hector, and
17 Davis, for Miss Harris and the Canvassing Board.
18 Your Honor, I would like to point out a couple of things, if
19 I could.

20 I think one of the key things that Mr. Douglass said
21 was, what they are vitally concerned about is the will of
22 the entire people of the State of Florida. I think,
23 Your Honor, if you look through the papers, what you will
24 see is what they are vitally concerned about is counting all
25 of some of the ballots. They are not the least bit

1 interested in counting all the ballots in the State of
2 Florida, and all the papers that are going to be presented
3 to you you're going to see that they want select ballots
4 here and select ballots there counted.

5 With respect to the Secretary and the Canvassing
6 Board, I think some things should be straightened out before
7 we go forward. With respect to Palm Beach County, the
8 Supreme Court of Florida, in their decision, gave the
9 Secretary from the Canvassing Board two options. It said,
10 if the office is open on Sunday for business, then at
11 5:00 p.m. on Sunday the returns were to be in the office and
12 the board was to proceed. If the office was not open on
13 Sunday, then they were to proceed at nine o'clock on Monday.

14 If Your Honor has read the order of the Supreme Court,
15 there is no discretion at this point in time that it is
16 reposed in either the Secretary or the Canvassing Board, as
17 they have read the order, and, therefore, they did what the
18 Supreme Court of Florida told them to do.

19 At a quarter of five on the appointed evening of
20 Sunday, Palm Beach County sent something that would only be
21 looked upon as being some sort of numerical potpourri.
22 There were columns of numbers. One column of numbers for
23 the Gore and Bush race had the automatic recount numbers
24 that had been done immediately following the election.

25 The second set of numbers that were provided had the

1 manual recount numbers. But when they got to the precincts
2 where they hadn't done manual recount numbers, the number
3 was empty. So the Canvassing Board had two possibilities,
4 they either take the automatic recount numbers that they
5 had, or they could take the second column, which would have
6 shown Vice President Gore 15,000 votes behind.

7 There was no way, looking at that document, to try to
8 figure out any way of including any of the manual recounts
9 that had been done. While we believe the statute is pretty
10 clear you must recount all of the ballots, that's what the
11 language of the statute says, if the certificate coming up
12 had included a partial recount, we would have had no choice
13 but to accept it.

14 To suggest that the Secretary of the Canvassing Board
15 acted in any improper fashion, as Mr. Douglass has
16 suggested, that they are aligned with Mr. Bush's side, is
17 unfair, any more than it would be unfair to suggest that the
18 Attorney General of the state is aligned with Mr. Gore's
19 side because he's a Democrat.

20 The second point, Your Honor, is with respect to the
21 162 Dade County votes. The information that we have
22 provided to us shows that the votes in question came from
23 135 precincts. Those precincts, Your Honor, was a
24 74 percent vote for Gore. They stopped at that point in
25 time. The overall numbers from Dade County showed that 54

1 percent of the votes were for Gore. So what statistical
2 value is supposed to be gleaned from these 162 votes is not
3 clear.

4 But the point is, Your Honor, the Canvassing Board and
5 the Secretary had no choice but to follow strictly the rule
6 that was laid down by the Supreme Court of Florida, that was
7 made quite clear.

8 With respect to why we're here today, we had a hearing
9 yesterday, and the hearing yesterday had to deal with all of
10 these things, and Your Honor ruled properly, we believe,
11 that before such time as you can get into discovery and
12 counting ballots, you had to know whether or not there were
13 legal issues and whether or not you had a prima facie case.
14 Your Honor ordered us to answer, I thought on Friday. I
15 accept the clarification Your Honor meant today, but because
16 they did, of course, come up with the witness list early,
17 that Your Honor wants us to respond tomorrow.

18 But, Your Honor, this entire schedule on the
19 blackboard, wherever it went, presumes that Your Honor has
20 already ruled in their favor. It has a generous allocation
21 of time for appellate review, as opposed to the time that is
22 necessary for trial.

23 The Democrats, Your Honor, asked and pressed the
24 Supreme Court of Florida to extend dramatically the protest
25 period, which was done. Now we're in the situation where we

1 have a relatively truncated contest period and what is to be
2 done is everyone is to be pushed in an unseemingly fashion
3 forward to meet their time deadline.

4 Unlike Mr. Douglass' side, or Mr. Bush's side, we do
5 not have representing the Secretary legions of lawyers to do
6 this work. Judge Carter today has set up in her case
7 something like 20 depositions that are supposed to be taken
8 in the next several days. There is a brief we filed today
9 in the Supreme Court of Florida at five o'clock, a brief in
10 the Eleventh Circuit at noon, and a brief in the
11 United States Supreme Court at four o'clock. On Thursday we
12 have to file another brief in the United States Supreme
13 Court, and oral argument is on Friday.

14 Your Honor, there is no conceivable way that the
15 procedure that you have set forward should be modified. The
16 issues must first be drawn. We have to see what the legal
17 issues are before we can go forward.

18 Finally, Your Honor, I have no idea what exactly is to
19 be done with these ballots that need to be counted. Under
20 the statute, in the Supreme Court opinion, there is no
21 guidance given. The only thing we know when there is a
22 manual recount -- and, of course, as Your Honor knows, the
23 Secretary's position was that manual recounts were only
24 supposed to be undertaken as a third alternative when there
25 was a tabulation system error. The Supreme Court of Florida

1 has rejected that and established a common law and equitable
2 and a constitutional basis for a manual recount.

3 But, Your Honor, the only standard is that the
4 three-person canvassing board is to divine the intent of the
5 voters. Mr. Douglass has cited to Your Honor a case that
6 talks about counting ballots. That's not what they have in
7 mind for Your Honor. Number one, we're going to select
8 certain ballots, and then Your Honor is going to be put into
9 the carnac position of having to examine, presumably, the
10 ballots to determine the intent of the voters.

11 Look at where we stand as far as that's concerned.
12 Dade County, Your Honor, decided that they couldn't get the
13 job done by the deadline of the Supreme Court so they
14 stopped the process. Broward County, apparently, from
15 everything that could be seen, had a relatively liberal rule
16 that they followed, and that was whether or not all the
17 holes were punched or some that were on the presidential
18 side and try to figure out what a dimple meant.

19 In Palm Beach County, on the other hand, apparently
20 what they did, from what you can tell, is, if they looked at
21 a ballot and they saw all the holes were punched except in
22 the presidential race and it was only a dimple, they would
23 determine that that was not a voter intent to vote.

24 What, pray tell, Judge, is the Court to do? Is this
25 Court being asked to determine what the standard is, and

1 what standard do you use? Do you use the standard that was
2 articulated by the Canvassing Board, or actually not
3 articulated, in Dade, Broward, or Palm Beach County? Do you
4 make it up?

5 The only guidance that we have in the statutes for
6 this procedure, which we believe was never intended for a
7 common law recount, is a three-person canvassing board that
8 is composed of one Republican and one Democrat and
9 one whatever in the middle, which is supposed to make
10 decisions as to intent.

11 We think the legal issues are very important issues
12 that need to be decided before we rush forward. And, also,
13 Your Honor, we will point out to you that the statute says,
14 on a manual recount, that you count all of the ballots, not
15 just some of the ballots, not the overcounts, the
16 undercounts, all of the ballots. Because, if you were to
17 look at other counties where you have ballots that are not
18 on punch cards, there might be other indications of a
19 voter's intent.

20 The legal standard that we suggest is, they must be
21 able to demonstrate to you before they can do any kind of
22 recount in the contest that it would make a difference in
23 the election, not in Broward, Dade, and Palm Beach Counties.
24 It's a statewide race. They have to demonstrate to
25 Your Honor that whatever it is they want this Court to

1 undertake has to make a difference in changing the election
2 results statewide.

3 They chose, Your Honor, when they went down the manual
4 recount route, to only challenge in three counties. They
5 made their bed in that regard. I do not know, Your Honor,
6 as a matter of law, how they can possibly demonstrate that
7 the change in these votes would make a difference in a
8 statewide vote as opposed to a county-by-county vote.

9 Finally, Your Honor, I would suggest, just as matter
10 of human decency, that we have to come up with a schedule
11 that works with everything else that is going on. There are
12 cases in the Supreme Court of the United States, the
13 United States Court of Appeal for the Eleventh Circuit, the
14 Florida Supreme Court, there other trial courts around the
15 state that are still moving forward.

16 Your colleague, Judge Carter, has just established a
17 very rigorous schedule to go forward. And we are a party to
18 every one of these actions, and we, Your Honor, do not have
19 500 lawyers that can turn their attention to this.

20 I would return, again, to the schedule Your Honor
21 established yesterday, which was a very reasonable schedule.
22 As Your Honor pointed out or suggested, you have ruled on
23 these motions before, they didn't like the answer, so they
24 have repackaged them and called them something else.

25 And finally, Your Honor, the second finally, the

1 schedule that they have, which has an allocation of time,
2 which is almost equal between appellate time and trial time
3 puts experience on its tail. Everyone knows it should take
4 longer to go through the process of identifying witnesses,
5 identifying issues, going through discovery and trying a
6 case than the appellate side.

7 This situation was not caused by the Secretary of
8 State or by the Canvassing Commission. It was caused by a
9 reallocation of time between the protest and the contest
10 period. And the rights of the people of the State of
11 Florida, and the rights of these Defendants should not be
12 turned on their tail in the rush by the Democrats to get a
13 certain result in a certain time. Thank you.

14 THE COURT: Mr. Richard?

15 MR. RICHARD: I have enjoyed the debate. My
16 understanding, however, is that what you wanted us to focus
17 on at this point is the scheduling.

18 THE COURT: That would be appreciated.

19 MR. RICHARD: I will limit myself to that issue.
20 Counsel is suggesting that it is necessary for you to force
21 us to go to trial on a case which is not only important, but
22 which involves a massive number of documents, and I suspect
23 a good many witnesses, without accurate time to take even
24 the barest amount of discovery, without adequate opportunity
25 to prepare our case for trial, and without adequate

1 opportunity to this Court to conduct a meaningful trial, and
2 they have not given Your Honor a sufficient reason why that
3 should be done.

4 I mentioned yesterday that the fact that this case
5 involves the presidential election is not sufficient reason
6 for us to suspend basic due process or the fundamental rules
7 of procedure designed to provide the contestants with a fair
8 opportunity to be heard and the Court with a reasonable
9 opportunity to have the evidence presented.

10 I suggest, Your Honor, that as long as this case is
11 concluded by the 9th, that is more than sufficient time for
12 it to be heard by whatever appellate court hears it. We
13 need to remember that the Florida Supreme Court, in the last
14 round of this interesting proceeding that we're involved in,
15 ordered briefs, received them, read them, heard oral
16 argument, and ruled in a day and a half. The Court needs no
17 more than two days to hear this and decide it after
18 Your Honor completes the trial.

19 Judge Clark, who counsel inadvertently referred to as
20 Judge Carter, has, indeed, scheduled a trial in a separate
21 election contest in this same election for the 6th. So what
22 counsel is suggesting is that we need to prepare for both of
23 these trials, try one on the 6th and the other one -- try
24 one next Monday and the other one on the 6th, and that is
25 unreasonable.

1 Your Honor, the only reason it would be necessary to
2 do that, the only reason suggested by counsel, is that they
3 need adequate time -- as if they needed adequate time to
4 have the ballots recounted, once again, after the trial.
5 Because I agree with counsel that it is absolutely
6 inappropriate for this Court, and I think the Court has no
7 authority, for Your Honor to begin counting ballots, again.
8 I'm not sure how you would do that. And there is no
9 authority for Your Honor to appoint a special master to
10 begin counting ballots. And there is no basis for ballot
11 counting to begin before Your Honor has determined that the
12 relief is appropriate.

13 The reason I mention this is, presumably, counsel will
14 suggest that if this Court doesn't hold the trial until the
15 9th, there will be no time for ballots to be counted. But
16 there is no reason for those ballots to be counted again.
17 If the Supreme Court had intended, as counsel is now
18 suggesting, that Your Honor would immediately begin another
19 hand recount of these ballots, then it would have been
20 meaningless for them to have given us a November 26th
21 deadline for the hand recounted ballots to be submitted by
22 the Canvassing Boards, which is what they did.

23 They said the final cutoff is 5:00 p.m. this past
24 Sunday. Counsel is saying that Your Honor should ignore
25 that cutoff and begin, once again, with a hand recount of

1 all the ballots they wish to be recounted.

2 The bottom line is that the issue of manual recounts
3 has nothing to do with the scheduling of this case, and
4 there is no reason why this case should not be permitted to
5 proceed to a trial that begins, I would suggest, on the 7th,
6 which gives us the 7th and the 8th, and Your Honor would
7 have an opportunity to hear arguments of rule on the 9th.

8 The Supreme Court, if it decided that it wished to
9 take this up, would have the 10th, the 11th, and perhaps
10 some of the 12th, to decide whatever they wish to decide.
11 And I would urge, Your Honor, that is more than reasonable
12 time for us to be able to do this.

13 I also would agree with counsel, by the way, that the
14 reason we find ourselves in this position with this
15 truncated amount of time is because of the legal strategy
16 that was elected by the Plaintiffs, who chose, instead of
17 filing an election contest immediately after the first
18 certification, to take a different route instead. And it's
19 unfair for them now to ask this Court to force us to go to
20 trial before we have adequate opportunity for preparation
21 and to ask this Court to hear a trial that cannot be
22 adequately presented in that time.

23 THE COURT: Let me ask you before you sit down, you
24 mentioned 30 depositions in some other case. That is
25 another case that is apparently, I guess it's going to get

1 ahead of this one. What does that case involve?

2 MR. RICHARD: It's a case out of Seminole County that
3 was transferred here. It's a contest of the same election.
4 It's a challenge to a number of ballots. It's not clear how
5 many.

6 THE COURT: Some other county?

7 MR. RICHARD: Yes, Your Honor. We asked Judge Clark
8 to transfer it to you for consolidation, but she declined to
9 do so. It was estimated there are about 30 depositions to
10 be taken. There are many witnesses, many documents. And
11 Judge Clark has scheduled it for trial on the 6th.

12 THE COURT: You're going to have to add lawyers. All
13 of you are going to be like the fellow that ran out and
14 jumped on his horse and rode off madly in all directions.

15 MR. RICHARD: May I make one more comment in that
16 regard? There was a comment by Mr. Douglass that my side
17 had plenty of lawyers to go around. But the fact is, number
18 one, I do not have an unlimited number of lawyers available
19 to assist me in this case. And, number two, there is only
20 so many lawyers who can prepare and present the case that
21 would be recognizable by the Court before we begin tripping
22 over each other.

23 And, finally, somebody has got to be in a position to
24 oversee all of the cases and make sure that we haven't
25 integrated presentations to the various judges, and that job

1 has fallen to me. I can only be in one place at one time.
2 It's not unreasonable for me to ask that we be accommodated
3 fairly. By the way, it's the Plaintiffs, and others who
4 support their same position, that have been in the practice
5 of filing lawsuits and motions day after day that have
6 placed us in this posture of having to respond all over the
7 state and virtually every hour.

8 THE COURT: It looks like to me, with the disparity
9 we've got, we're going to have to make a real command
10 decision here, I suppose, and we're going to have to work
11 out something.

12 I've been looking at the calendar. Mine, of course,
13 wasn't as pretty as your calendar that we had here today,
14 but that's the first thing I did, I wrote on the first
15 motion. That was my little calendar I was looking at when I
16 was trying to fashion what I did the other day.

17 Now that I've got this fancier version, what I was
18 thinking, and I hope, perhaps, you could reach some mutual
19 accommodation, it looked like to me, because of the time
20 frame, and recognizing that 12 days out of the normal time
21 for the contest, or in this particular case, contesting an
22 election, has always burned up in some other proceedings
23 rather than in a proceeding for a contest.

24 It doesn't leave us much time, but we've got to work
25 with what we've got, and we've got to do the best we can to

1 do that, and in a fashion that is going to be fair to all of
2 the parties. And at this juncture, I've just about stripped
3 the Defendants down to the bares of due process. I can't
4 just absolutely dispense with due process as far as they are
5 concerned.

6 But as we stand now, they have to file their answers
7 by Thursday, and they have to furnish the Plaintiffs their
8 list of witnesses and exhibits at the same time.

9 I don't have too much disagreement with your ultimate
10 schedule, but I had sort of looked at December 7th or the
11 6th as being able to conclude a full and fair hearing. And
12 it appeared that we might get on track to do that if, when
13 we expedite it and you have your answers on Thursday and the
14 list of witnesses, that perhaps we could begin, with some
15 ongoing discovery, perhaps the commencement of some portions
16 of the some taking of some evidence on Friday.

17 I have gone ahead, in view of the circumstances, to
18 count Saturdays and Sundays. It's been my understanding,
19 Circuit Judges in Florida, we're on call 24 hours a day. If
20 it's necessary, that's where we would be. So we're
21 available, and perhaps to the extent that any personnel is
22 necessary, if that could be arranged. This Court just can't
23 direct people to do things when they don't -- we have a lot
24 of logistics as far as Clerks and Bailiffs and what have
25 you, so we need to plan for that.

1 It just doesn't leave you too much time for discovery,
2 so to try to commence a trial on Friday, without you having
3 at least a day or two for discovery, I frankly don't know
4 where else we'll go in that regard.

5 It seems to me we need to take up some matters to
6 determine, as I indicated before, what ballots are we
7 talking about and which ones. And if the Court is going to
8 be asked to count ballots, before we just start counting, it
9 seems like to me that -- what would be the standards? For
10 any Clerks or any fellow Judges that perhaps were appointed,
11 what would be the standard?

12 And if the standards are, as indicated, the totality
13 of the circumstances, we won't have any people voting, I
14 suppose, on individual ballots, but we would have people
15 vote, Judges, or appointed Clerks, to then decide for
16 themselves under the totality of circumstances, I'm unsure
17 at this juncture. And it would appear that perhaps the
18 taking of some evidence would be required, or at least
19 perhaps that is the initial evidence that should be required
20 and taken, so as to determine what standard, if any, is to
21 be determined for the counting of votes.

22 And then we would have to get to the question of what
23 are we going to count, as I understand it. And that's an
24 excellent decision by Judge LaBarga, and I have had the
25 opportunity to read in the interim, in Palm Beach County,

1 where he, I think, correctly stated the law, and then the
2 particular board acted.

3 But I have no idea what method was employed in
4 Palm Beach. For example, what, in fact, did they do as a
5 result of the Judge's annunciation? And as I understand,
6 there is a reference here that perhaps in another county, I
7 assume perhaps using the same judicial standard, what, in
8 fact, did that board do? Or how did it conduct themselves?
9 Or factually what type of ballot prompted them to have a
10 vote each time? Or how, in fact, did they conduct that?

11 That, perhaps, would be of some benefit to try to
12 determine if there is a necessity to count ballots in this
13 contest, then that's the procedure we should follow.

14 What I'm suggesting is, I think where we are is,
15 perhaps if we could get ready to take some evidence, perhaps
16 on Friday or Saturday, with reference to that initial
17 evidence, I believe it's going to have to be done. We can't
18 have people jumping on the horse and riding off in all
19 directions just counting. We can count until everybody is
20 slap happy. But if nobody is on the same page, then I don't
21 know what is being accomplished.

22 And in that context, as we do that, we need to find
23 out what ballots, if any, do we need and what are the
24 logistics of doing that. Perhaps we could go ahead, there
25 is another aspect of this today, agree that we need to try

1 to get at least some ballots, at least something we could --
2 you can put them into evidence, perhaps we would have some
3 on hand. But if we are talking about bus loads of ballots,
4 then we've got to turn around and figure out, are we going
5 to go to the mountain, or is the mountain going to come to
6 us?

7 MR. KLOK: Your Honor, real quick, Friday is -- we do
8 not have two teams, we have one team, and Friday we have to
9 be before the Supreme Court. So, if Your Honor wants to do
10 anything, we respectfully request it would be Saturday
11 rather than Friday.

12 MR. BOIES: We respectfully request, if we're not
13 going to do it Friday, do it Thursday. We always want to do
14 it earlier rather than later. I think that both sides here
15 have a lot of lawyers. Some people say --

16 THE COURT: Let's just don't get off on that and start
17 fussing about that.

18 MR. BOIES: If we could proceed with this case,
19 Your Honor, without having this case delayed by other cases,
20 I think that's going to be critical. It's certainly going
21 to be critical from our standpoint.

22 I think the Court focuses on two very important
23 issues. One is the issue here of what the Canvassing Board
24 did, that is, does this Court have to review what the
25 Canvassing Board did or not. We submit that that is not an

1 issue that is in front of this Court. We submit that the
2 issue that is in front of this Court is what is the right
3 resolution of the contested ballots.

4 We have contested certain ballots. We have said that
5 certain ballots that we believe should have been counted for
6 Vice President Gore were not counted for Vice President
7 Gore, and we have identified what those ballots are. We
8 believe that under Florida law we have a right to ask for a
9 judicial determination as to whether or not those ballots
10 should or should not be counted for Vice President Gore.

11 Whether the Palm Beach board did their job right or
12 wrong isn't relevant to that question, except, obviously, if
13 they did it right, maybe they would have counted it for
14 Vice President Gore. But this is not a review of an
15 administrative decision. This is not something where you
16 have to go and ask them what standard did they apply, did
17 they look at the ballot properly, did they spend enough time
18 or not enough time, did they have enough people look at it.
19 None of those issues are relevant.

20 This is a question, as we think the case law makes
21 very clear, for the Court to decide, for the Court or the
22 Court's appointed agent, to look at the ballot and make that
23 counting decision.

24 The second issue is what kind of standard should be
25 applied. Again, we don't think that is a factual issue. We

1 think that is a legal issue. And we think the Supreme Court
2 of Florida has made clear that it's a legal issue, and that
3 is consistent with what the Massachusetts Supreme Court has
4 ruled, what we think the Illinois Supreme Court has ruled,
5 the Supreme Court of South Dakota has ruled, and a lot of
6 other courts, as well.

7 But that is a legal question, not a factual question.
8 It doesn't depend on the taking of evidence. If there are
9 particular questions about how the machines work, or the
10 like, that is something that we would be prepared,
11 obviously, to present evidence to the Court about, if that
12 would be useful to the Court.

13 But the fundamental issue as to whether a ballot does
14 or does not express the voter's intent has consistently,
15 under Florida law, been held to be a judicial question, and
16 it's that judicial question that we're seeking resolution of
17 here. Those, I think, are the two legal issues that are in
18 front of the Court.

19 And from our perspective, to say that you're going to
20 wait until after the trial to have the examination of the
21 ballots is backwards, because here the witnesses are
22 primarily the ballots. The issue is whether particular
23 ballots do or do not express a voter's intent. With respect
24 to the Dade County ballots, approximately 9,000 of them, no
25 one has ever looked at those ballots to determine whether or

1 not they express the voter's intent.

2 THE COURT: Nor has anybody applied any standard to
3 them.

4 MR. BOIES: Nor has anyone applied any standard to
5 them.

6 THE COURT: What is the standard that is to be
7 applied? That's where we get right back to where we began.

8 MR. BOIES: That's right, and it may very well be
9 useful to have either briefs or arguments to the Court,
10 because that is a legal question, about that standard. We
11 think the Florida Supreme Court set that standard in its
12 opinion. We think that the Florida Supreme Court adopted
13 what the Illinois Supreme Court was saying in the long
14 passage that was quoted there.

15 THE COURT: Are you saying that the Judge in
16 Palm Beach was incorrect in his ruling? Do you disagree
17 with that?

18 MR. BOIES: No, I think Judge LaBarga was on the same
19 page. I think that Judge LaBarga's opinion also reflects
20 the right standard.

21 THE COURT: That's the totality of the circumstances
22 test then. You have to look -- you have to have something
23 to look at so you can make a determination what that is
24 going to mean, don't you?

25 MR. BOIES: What you look at, Your Honor, I think, is

1 the ballot, and it is to get that process started that we
2 have been pestering the Court with as many papers as we have
3 submitted.

4 THE COURT: It looks a little bit like you're muddled
5 to death by a duck.

6 MR. BOIES: We appreciate that, Your Honor, but we
7 decided that that was a better approach, at least in our
8 early days, then sort of come in with something stronger.

9 This is something that is extremely important to us.
10 We want to be gentle. We don't want to be intrusive with
11 the Court, but we do want to press the Court, because the
12 Supreme Court clearly believed that this job could be done
13 in the time allotted. Defendants' counsel keeps saying it's
14 our fault. We think it's their fault. But the
15 Supreme Court said it doesn't make any difference whose
16 fault it is. You've just got to get it done within this
17 time period.

18 THE COURT: At this juncture, I can't be worried with
19 that. I have other things to do. Let me ask, the reason I
20 indicated, we need -- if we could arrive at least what we
21 could have, at least begin doing something. If I had some
22 idea, if we were talking about, you mentioned, you said
23 3,300 that are disputed ballots in Palm Beach, we could find
24 out.

25 MR. RICHARD: Your Honor, I wanted to address this,

1 because it relates to what you are saying.

2 MR. BOIES: Could I correct one thing about
3 Palm Beach? Somebody told you, and I don't remember who it
4 was, but somebody told you the last time we were here,
5 yesterday, that there was an order from Judge LaBarga that
6 prevented those ballots from coming up here.

7 THE COURT: That's my recollection.

8 MR. BOIES: We've checked and we don't think there is
9 such an order. If whoever said there was such an order
10 could tell us what order they are taking about, what date it
11 was entered, and maybe get a copy of it, that would be
12 useful, because we've checked the court records and we can't
13 find any such order.

14 THE COURT: It was my presumption that that was
15 one problem that needed to be addressed as the parties were
16 conferring last night or today, and perhaps that could be
17 resolved.

18 MR. BOIES: No one we've talked to has been able to
19 get us a copy of the order.

20 THE COURT: Let's ask Palm Beach right now. Counsel,
21 can you give us some assistance?

22 MR. McMAHON: I will try to. That would be referring
23 to the order of Judge LaBarga, and Mr. Boies is correct to
24 the extent that he searched for a written order.
25 Judge LaBarga did not reduce his order to writing. He ruled

1 from the bench and he directed us to make all the ballots
2 available for public inspection upon completion of the
3 manual recount.

4 That public inspection began today. There is a
5 hearing scheduled for tomorrow morning before Judge LaBarga
6 at 9:00 a.m. There are various motions, but among them, the
7 Florida Democratic Party is going to ask that the public
8 inspection be terminated for a number of reasons, most
9 particularly because those ballots may well be critical
10 evidence before Your Honor.

11 So we will be back in front of Judge LaBarga in the
12 morning. There was a verbal order from Judge LaBarga last
13 week, but it has not been reduced to writing.

14 THE COURT: You are going to be back before the Judge
15 in the morning?

16 MR. McMAHON: Yes.

17 THE COURT: We would be able to know something, then,
18 tomorrow?

19 MR. McMAHON: We would expect so. Judge LaBarga has
20 ruled very promptly on these. He ruled from the bench.

21 THE COURT: Then that is some help. At least it gives
22 us further information. Mr. Richard?

23 MR. RICHARD: Your Honor, before we decide what to
24 schedule, we need to address the question of what the
25 threshold issue is. I would suggest to Your Honor that I

1 disagree with Mr. Boies. I do agree with Your Honor, but I
2 would like to place it in what I think is the proper context
3 here.

4 The Florida Statute provides that it is within the
5 discretion of the Canvassing Boards to determine whether or
6 not there will be a manual recount, and if so, to conduct
7 that manual recount. The Florida Supreme Court, in its
8 recent decision that we are all well aware of, explicitly,
9 expressly reminded us that it's within the discretion of the
10 Canvassing Boards, both to make that decision whether or not
11 to do it, and to conduct the manual recount.

12 Florida law does not provide, when a Canvassing Board
13 has completed a manual recount, just because one files a
14 protest or a contest, that the Circuit Judge shall then step
15 into the shoes of the Canvassing Board and begin to look at
16 15 or 20 or 40 or 50 or 60 or 100,000 ballots one at time
17 and say, I disagree with the board here, I agree with the
18 board there. That's not how it works.

19 What the law is that the judgment for the Court is
20 whether or not the Canvassing Board abused its discretion in
21 some manner. That's what we have to decide as a threshold
22 issue. What the remedy would be for that we don't reach
23 until after Your Honor decides whether or not they abused
24 their discretion. When we reach that point, we would argue
25 that the remedy would not be a recount under any

1 circumstances, but we haven't gotten anywhere close to that,
2 yet.

3 What I suggest to Your Honor that we need here is, we
4 need to hear testimony, if the Plaintiffs are claiming that
5 that board abused its discretion, as to whether or not it
6 did so. We need to hear, as Judge LaBarga did, from members
7 of that Canvassing Board as to what it was that they did.

8 What Your Honor is being told is, for some reason, the
9 members of that Canvassing Board didn't obey the law, didn't
10 obey Judge LaBarga, didn't obey the Florida Supreme Court.
11 And the threshold question is, was that true or not?

12 If after Your Honor hears the evidence, and after you
13 hear from the members of the Canvassing Board and whomever
14 else might have knowledge of what the Canvassing Board did,
15 you're going to either say, I think that canvassing board
16 acted within its discretion, as the law permitted it to do,
17 and there is nothing more to be said here. Or you may say
18 that they violated their discretion for one reason or
19 another, at which point you will then decide what the remedy
20 is.

21 Counsel is trying to put the cart before the horse.
22 It's asking Your Honor to begin to institute a very onerous
23 and costly remedy before you decided anybody violated
24 anything.

25 So I would suggest to Your Honor is that the first

1 thing we need to do is schedule a hearing for Your Honor to
2 determine whether or not the Canvassing Boards in
3 Palm Beach, and Dade County, and Nassau County abused their
4 discretion in some fashion. If they didn't, there is
5 nothing more to do. I would urge Your Honor that that
6 hearing ought not to begin Friday, which is not sufficient
7 time. We need to get witnesses here, we need to get
8 documents here, we need to complete whatever discovery there
9 is, and that needs to start next week.

10 THE COURT: You have your existing schedule. Your
11 response times, answer times have been moved to Thursday.
12 We're not going to do anything on Friday. We will schedule
13 a hearing, it will be all day, if necessary.

14 By then you will have had the answers, we will have
15 some issues joined. Now we have a little bit more of an
16 idea of what, perhaps, Mr. Richard's position would be on
17 this. We know how to frame what it is that we need to take
18 in evidence. In other words, you've seen what the issues
19 are, then everybody needs to come with a preliminary
20 threshold of evidentiary determinations that we need to
21 make, or that each side feels that we need to make, and we
22 will hear it all, and then we will make those initial
23 rulings and then proceed accordingly.

24 But then, in conjunction with that, I have no idea
25 what we're going to do concerning ballots, counting or not

1 counting ballots. That's going to be dependent upon if
2 there is any evidence required, or if not, if Mr. Boies is
3 correct, if it's a matter of law, then you won't need to be
4 presenting any evidence at that hearing, then we will have a
5 determination. But we need to look, just in case, to have
6 at least some of the, it seems to me, some of the
7 information in the form of the ballots perhaps to be on
8 hand, and perhaps in this location, at least to the extent
9 of -- well, they've requested, as I understand it now, it's
10 some 3,300 ballots from Palm Beach County, subject to
11 Judge LaBarga's direction. We could request to get those up
12 here.

13 And if there are, whatever it is, 10,000 in
14 Dade County, if we could just bring them or have them
15 transported, or at least make the arrangements in an orderly
16 fashion. I don't think anybody is going to be able to say,
17 we need a few ballots up here by in the morning and call
18 down and expect somebody to slingshot them up here.

19 We need to look at some things about how to obtain the
20 ballots, and that is, volume of them and the transport of
21 them and the security and the storage.

22 At this point, I still have some questions. For
23 example, how many of those in Palm Beach, or are those
24 objections -- the 3,300, did I understand that there were
25 some objections to that? Does that include the ballot

1 objections of both sides or just one side? Can anybody
2 answer that question?

3 Is this 3,300 that you are requesting, that the
4 Plaintiffs are requesting, just the ones that perhaps were
5 objected to by the Plaintiffs? Am I then to assume that the
6 Defendants did not object to any ballots that Palm Beach's
7 Canvassing Board reviewed, and, therefore, there were no
8 ballots preserved which need to be brought? I don't know.

9 MR. RICHARD: I don't know where that number came
10 from. We believe the Canvassing Board acted within its
11 discretion and within order of Judge LaBarga, so we have not
12 challenged what they did.

13 MR. BOIES: The 3,300 are ballots that we have
14 challenged.

15 THE COURT: If you want some ballots up here, we'll
16 bring them. If you want some ballots, we need to know which
17 ones you objected to, because we have to find out what they
18 did. I'm not saying that anybody is going to count ballots.
19 We have to take some evidence. I understand your position,
20 Mr. Richard.

21 If the review -- if what the action that is required
22 by law is to review the actions of the Canvassing Board,
23 then that may be another matter. But if not, then at least
24 we would have something to start on. And if any side here
25 has any ballots that are objected to, if you want them, you

1 better let us know so we can throw them on the truck, too.

2 I need to find out from somebody, if we have 3,300,
3 can somebody tell me what it would take to transport those?
4 And we could start asking the officials how we could get
5 them and explore it, so at least by the time we start the
6 hearing on Saturday, if we could get them up here by Friday,
7 this is Tuesday, so that would at least give them some
8 opportunity to orderly try to bring what it is that we need.

9 MR. BRISTOW: Your Honor, Daryl Bristow. I was
10 prepared today, and I will be prepared on Saturday to
11 address these threshold issues fully. This is a contest of
12 an election, not a contest of just a certain number of
13 specified ballots that the other side would like to see.

14 The law is clear, if you get over the immense hurdles
15 that the law presents to begin to second guess the election
16 officials, the law is clear that if you are going to have a
17 manual recount --

18 THE COURT: I don't want to truncate you, sir. We'll
19 hear that at the hearing on Saturday. All I'm trying to do
20 is get us logistically in a position that whatever --
21 respectfully, if you are, perhaps, wrong and the ruling is
22 the other way, we need to have something. We don't then
23 want to have further delay after delay. It's just the
24 logistics of bringing something, just in case we can go
25 ahead and order it, if we can order it.

1 MR. BRISTOW: I don't want to delay this hearing
2 unduly, Your Honor, but the fact is, you have to look at
3 two issues, one is, if you have a manual recount, it has to
4 be a recount of all of the votes. And you have the second
5 issue you have to look at which is statewide --

6 THE COURT: We don't have enough evidence, if you are
7 right.

8 MR. BRISTOW: That's right.

9 THE COURT: At least we will have something.

10 MR. RICHARD: Do I understand you are planning on
11 legal arguments Saturday, you're not planning on bringing
12 witnesses up?

13 THE COURT: When you join the issues, you respond, and
14 each of you know what your positions are, then we're going
15 to have a hearing. We'll deal with all matters that are
16 legal and any and all matters that are evidentiary.

17 MR. RICHARD: So you want to hear evidence?

18 THE COURT: I want to hear whatever each side wants to
19 present at that time. I think, for an orderly procedure,
20 perhaps we will take up matters that, perhaps, may be of law
21 to begin with, and then we will proceed to those matters
22 that may have some --

23 MR. BRISTOW: On the evidentiary hearing, if any.

24 THE COURT: It means everybody get your best hold and
25 bring what you need.

1 MR. BRISTOW: Are you planning to look at this
2 question that I know you have in your mind of standards on
3 Saturday, or does that come later?

4 MR. GREENBURG: Your Honor, we respectfully request
5 that you give us some instruction -- let me briefly tell the
6 Court the position we are in.

7 For us to get the ballots ready to be brought up to
8 Tallahassee, if that is what Your Honor orders, it will take
9 us tomorrow to do that. We will then need specific
10 instructions. These ballots are under 24-hour security
11 right now, and have been since November 7th. We would need
12 specific instructions as to how the ballots are to be
13 shipped, what kind of security, if any, what mode of
14 transposition, who will accept them.

15 The statute requires that these be under the
16 Supervisor of Elections' control. Unless the Court orders
17 differently, we will comply with the Court's order. But
18 there needs to be some definite guidelines before we can
19 release these, Your Honor.

20 THE COURT: I understand there is an outstanding
21 request for production, and there is no technical legal
22 objection to that. Certainly, then, if the Supervisor could
23 furnish that, I would think that you could submit such
24 proposed order as you deem would be necessary. And I would
25 think, if that's what you require, if there is no objection

1 to any of those items from these parties, then we could
2 enter that.

3 MR. GREENBURG: Your Honor, we'll do that if the
4 parties can agree to a practical method that the Supervisor
5 can implement, that's fine. But right now, we have requests
6 from at least half a dozen newspapers under the public
7 records law for all these ballots, so we will need a Court
8 order. If Your Honor will sign something, we will comply
9 with it, provided it's practical. Nothing can physically
10 leave here, Your Honor, until Thursday morning at this time,
11 or late tomorrow night at the earliest.

12 THE COURT: That's the reason I wanted to bring it up.
13 Is that Mr. Greenburg?

14 MR. GREENBURG: Yes.

15 THE COURT: The reason I thought I would broach the
16 subject is just this sort of situation. I can't see at this
17 juncture where there would be any need for those ballots, at
18 least those that have been requested, until Saturday. So
19 that gives, perhaps, not a long amount of time, but at least
20 an adequate time to inconvenience your Supervisor of
21 Elections.

22 And I suppose, since this is a request to produce, if
23 there is an expense involved, in essence, I can grant their
24 request to produce. If there is some expense involved that
25 the Supervisor is concerned about, then I will assess that

1 against the party whose motion is being granted for the
2 production of those documents, if it's necessary.

3 MR. GREENBURG: That would be fine and appreciated,
4 Your Honor, but we will also need the guidelines of how it's
5 to come up. Is it supposed to come up regular mail, UPS,
6 FedEx, security? We need to know that, please.

7 THE COURT: What I would suggest is, I need to know
8 what your Supervisor wants to do, and what I want to do is
9 to do what your Supervisor of Elections wants to do with the
10 Supervisor's ballots, and I will validate it, confirm it,
11 and stand with him or her at every juncture.

12 What I need is for somebody to tell me what I need to
13 do to satisfy the Supervisor. The Supervisor understands
14 every nook and cranny of the election laws to make sure that
15 what the Supervisor wants done with those ballots, I will
16 order it done.

17 MR. GREENBURG: Thank you, Your Honor. The Supervisor
18 is here with me, and he's saying it would be his
19 recommendation that they be driven by Miami-Dade police.

20 THE COURT: You will have to go talk to the police
21 department now, I suppose.

22 MR. GREENBURG: If Your Honor confirms our suggestion,
23 the Miami-Dade Police Department will do it.

24 THE COURT: Do you want me to require the parties
25 whose request I'm granting for the production to prepare the

1 order? You can perhaps dictate what your requirements are,
2 have them prepare an order for submission. I would set a
3 requested receipt date up here, say, Friday afternoon.

4 If your Supervisor, for example, wants them
5 transferred to the Clerk of the Court up here, then the
6 Clerk would have some advanced notice so that the Court then
7 could store them in accordance with your Supervisor of
8 Elections' directions.

9 MR. GREENBURG: Your Honor, we will prepare the order
10 and submit it to Mr. Rutledge by tomorrow morning. He can
11 bring it to the Court. That will give us the time to put in
12 exactly what we need. We will send it to respective
13 counsel, and that would be appreciated very much. We will
14 prepare the order.

15 THE COURT: You don't know how much I appreciate that.

16 MR. McMAHON: We would request we would be included in
17 that order, as well. Of course our Supervisor has the same
18 concerns.

19 THE COURT: How about, if you would undertake the same
20 endeavor and prepare the order, that is your preference.

21 MR. McMAHON: We'll do that, as well.

22 MR. BRISTOW: I want to at least caution the Court --

23 THE COURT: Go ahead, let me hear you.

24 MR. BRISTOW: On Saturday we will be arguing --

25 MR. GREENBURG: If I may, I want to make sure we are

1 talking about the 10,750 undervotes; is that correct?

2 THE COURT: That was the subject of -- you sent a
3 request for production.

4 MR. GREENBURG: That was the subject of the request
5 for production.

6 THE COURT: All I'm asking is to comply with the
7 request for production. If they didn't ask what they should
8 have, it's their fault. And at the same time, if there were
9 any requests from any of the other parties, or if there are,
10 you see what is going to happen, so I strongly suggest that
11 somebody look at that.

12 Here again, this is not to indicate in any way, shape,
13 form, or fashion, I assure you, sir, that nobody is going to
14 start counting ballots on Saturday, unless we get through
15 with some of our proceedings, and if there is a basis that
16 dictates that ballots should be counted, perhaps they might
17 start counting, or somebody would start counting, or there
18 would be a count beginning Saturday night, or Sunday, or
19 Monday. I don't know.

20 All I'm trying to do is logistically get -- in other
21 words, hold everything in a situation where, dependent upon
22 the development, we would be able to move, and then not, in
23 effect, have truncated some right on this side, if in fact,
24 they are entitled after we've given, admittedly, a short
25 notice and opportunity on your side.

1 MR. BRISTOW: The only thing I want to do is to advise
2 the Court that it is very clear we do believe that you will
3 not be into counting votes, but if you should get to that
4 point, we're going to have a very clear position that you
5 cannot look at those votes in isolation and that they must
6 be looked at in the context of the entire county vote, and
7 we will be talking to you about what you would have to look
8 at outside those counties.

9 But at least for now, in terms of the issue with these
10 counties, we want to advise the Court and all parties that
11 it would be our position that no count could take place
12 other than in the context of a full manual recount.

13 THE COURT: I understand what you're indicating would
14 be your position, and that's a matter that perhaps we'll get
15 into on Saturday. But in the meantime, the Clerk will have
16 at least some of the evidence, a portion of it, and if there
17 is more evidence that needs to be taken, if there was to be
18 any recount at all, then perhaps we can tend to that part
19 and figure out how we're going to get the rest of them.

20 Or if there is not any necessity for them, the
21 Supervisor will be happy that the Clerk has kept them in
22 their vault, and there won't be any need for anybody to go
23 in there and do anything except for the Clerk to notify the
24 Supervisor that we wish to return your ballots.

25 MR. BOIES: I have one question and one comment. The

1 question is, both Miami and Palm Beach indicated that they
2 could have the ballots up here, perhaps, by tomorrow night,
3 but certainly by Thursday, and I would request that the
4 ballots be brought up on Thursday, if that continues to be
5 possible, rather than waiting the day of Friday.

6 THE COURT: What is the difference?

7 MR. BOIES: It is our position that we can't wait
8 until Saturday to answer two legal questions. Those legal
9 questions are, one, whether it's an abuse of discretion
10 standard, or whether the Court is going to order a recount.
11 And, two, whether you look at the contested ballots or
12 whether you are going to try to look at all the ballots in
13 the county or all the ballots in the state.

14 Those are two legal questions that we don't think we
15 can afford to wait until Saturday to have answered. If the
16 Court is not prepared to address those issues before
17 Saturday, we're going to have to appeal that decision,
18 because it is our view that waiting until Saturday is
19 tantamount to denying the substantive relief. And if our
20 appeal should be successful, we would want to have those
21 ballots here so the Court could then proceed.

22 THE COURT: What we're going to do is what I just
23 indicated. And, of course, I understand you have your
24 rights and your position, but I'm not going to interfere
25 with the U.S. Supreme Court on Friday, and we're going to

1 have our cutoff there. You have one day on Friday to do
2 discovery with respect to any evidentiary matters, and
3 perhaps to marshal or assimilate any evidence. I'm going to
4 direct that the Supervisors, if they do it sooner, it's fine
5 with me, we just need to notify the Clerk. But the deadline
6 for having the request for them to have the ballots that
7 I've indicated up here is Friday.

8 I didn't say a time. Would twelve o'clock, you think,
9 be feasible, Mr. Greenburg, on Friday?

10 MR. GREENBURG: Let me ask the Supervisor one second.
11 Yes, Your Honor.

12 THE COURT: How about Palm Beach?

13 MR. McMAHON: As far as we can tell. If we run into a
14 problem, we'll get back to you right away.

15 THE COURT: Try twelve o'clock, and if you can't,
16 close the business. And we'll schedule, it's an ominous
17 hearing for whatever needs to be considered in this case on
18 Saturday. And we will take action with all due speed on
19 what direction we're going to go as far as the ballot
20 counting or otherwise, and that's all we have. If we wind
21 up with 10,000 ballots and 3,300 ballots, that still would
22 be in the timetable. We have Sunday, Monday, and Tuesday to
23 count, or, perhaps, even if it went over to Wednesday, we
24 would be finishing up with any other legal hearings and
25 matters while that was going on in those four or five days,

1 and that still would keep us on the timetable that I have
2 indicated, hopefully, finishing by the 6th.

3 And that essentially would almost be in accord with
4 the new schedule that was requested here this morning. It
5 gives some leeway. I can't set an absolute deadline. It
6 may go into Thursday. If that is the case, it does truncate
7 to some extent the appellate time. But everybody has their
8 problems with this case. Everybody will have to share the
9 good fortune.

10 MR. KLOK: I want to make the same point for the
11 record. On behalf of the Secretary and the Canvassing
12 Commission, our view is, if there is any recount to be done
13 at all, under the statute, it has to be all the votes.

14 THE COURT: I gather that that might be his position.
15 I'm sure I will hear that, again, on Saturday. I want
16 everybody to understand, I'm not making any prejudgments.
17 I'm just trying to get, in effect, get all the chairs
18 arranged on the deck.

19 Do we have any questions about this new schedule? The
20 only other thing I can think of is, again, with your
21 responses due on Thursday -- did we say twelve o'clock, or
22 close of business five o'clock?

23 MR. KLOK: Five o'clock.

24 MR. BOIES: We filed ours before twelve.

25 MR. RICHARD: It was originally Friday, and we backed

1 it up to Thursday.

2 THE COURT: Since we're going to have the hearing on
3 Saturday, it won't be necessary to move it to twelve. That
4 being the case, you've got your period there, you will have
5 Friday for such discovery or marshaling of evidence that
6 anyone else needs.

7 I've now directed, you will have some evidence
8 available in the event there is a need for it at that
9 hearing, at least, we hope, for the purposes of your case.
10 If anybody else decides that they want some more ballots,
11 you've heard the Supervisors, they are, apparently, bending
12 over backwards to accommodate everybody, but we don't want
13 to wear their patience out.

14 And if somebody does have some further suggestion, if
15 they knew tomorrow, perhaps they could work on trying to
16 accommodate by, say, Saturday. That is something that the
17 other parties need to look at. That being the case, where
18 does that leave us now with your emergency motion here?

19 I think I've essentially denied the beginning to count
20 something that we don't have right now.

21 MR. BOIES: I think you have essentially denied it,
22 Your Honor. I do think there is an issue, and I think you
23 have essentially denied it, but I'm not sure, and I would
24 like --

25 THE COURT: I want to hear further matters that we

1 need. Was that my friend Mr. Greenburg down there?

2 MR. GREENBURG: Yes, sir.

3 THE COURT: What was it?

4 MR. GREENBURG: What time Saturday is the hearing,
5 Your Honor?

6 THE COURT: What is your pleasure?

7 MR. GREENBURG: Whenever the Court wants to set it.
8 We just want to know.

9 THE COURT: Is nine o'clock all right?

10 MR. GREENBURG: Yes, sir.

11 THE COURT: Anybody else have any problem with that?

12 MR. BOIES: The motion that we submitted had two parts
13 to it. One is how to count, and the other was when to
14 count. And we obviously asked the Court to have the count
15 start immediately, and I think the Court has clearly
16 indicated that it is not going to do that, at least before
17 Saturday.

18 THE COURT: Then this is the matter of law that you
19 made reference to as to how to count?

20 MR. BOIES: Yes. Then there is a question of how to
21 count. As many as of these questions that we can resolve,
22 we would like to resolve.

23 THE COURT: I understand. It prompts this question,
24 is there any reason that we couldn't have a hearing Thursday
25 afternoon on that limited aspect?

1 MR. RICHARD: Your Honor, how can we be talking about
2 how to count when we have not yet determined whether or not
3 anybody is entitled to count --

4 THE COURT: In case we're going to count.

5 MR. RICHARD: The point is, I don't know what he means
6 when he says, how to count. The Canvassing Board utilized
7 some methodology, because the statute didn't tell it what it
8 was going to be, it just said count these ballots and
9 determine whether or not they should have been voted for a
10 particular voter --

11 THE COURT: His position is, it's a matter of law. I
12 don't know what that entails, but I will have to hear it.

13 MR. RICHARD: The Canvassing Board in Palm Beach
14 County utilized some methodology, some standard by which
15 they determined whether or not to count a ballot. They are
16 claiming that the standard that the Canvassing Board used
17 was improper and an abuse of discretion.

18 MR. BOIES: We are not.

19 MR. RICHARD: Then I'm not sure what it is they are
20 claiming.

21 THE COURT: Let him finish his argument. Go ahead.

22 MR. BOIES: We are not claiming that it's an abuse of
23 discretion. Indeed, we are arguing, it is our position, we
24 think the law is, that it's not a question of the Canvassing
25 Board's discretion at all. This is not an abuse of

1 discretion case.

2 This is a situation in which there are certain
3 contested ballots. Our argument is that those ballots were
4 voted for Vice President Gore and Joe Lieberman. We think
5 that the Court needs to look at those ballots, directly or
6 indirectly, and conclude whether we are right or wrong. It
7 has nothing to do with Canvassing Board discretion.

8 THE COURT: These are ballots that the Canvassing
9 Board did act on and made a decision, and then your position
10 would be that that was a futile act because they were
11 objected to and that there is a de novo review of those
12 ballots before the Court?

13 MR. BOIES: No and yes. No, it was not a futile act,
14 because that is part of the canvassing procedure. But, yes,
15 it is a de novo review, just as we think the Courts have
16 consistently held.

17 In Miami-Dade County, 9,000 of the 10,000 ballots were
18 never looked at by the Canvassing Board, so you don't have
19 that abuse of discretion question. But just with respect to
20 the Palm Beach Board, it is our view, and we do think it
21 would be useful to argue this as soon as the Court will hear
22 us, that it is not a question of abuse of discretion. It's
23 not a question of whether it was clearly erroneous or any
24 standard like that. It is a question of what are these
25 votes, and that is a judicial question.

1 The Florida courts, including the Florida Supreme
2 Court has dealt with this question before. They've held
3 it's a question of judicial interpretation. And it's not a
4 question in which this Court is bound by what the
5 Canvassing Board did.

6 THE COURT: We're talking about Dade now, as
7 distinguished from Palm Beach?

8 MR. BOIES: Dade, the Canvassing Board didn't look at
9 these ballots. So in Dade there is no abuse of discretion,
10 because there was no discretion exercised.

11 Even in Palm Beach, it is our view, we've urged the
12 Court, and we would like to argue this as soon as the Court
13 is prepared to hear us, that even in Palm Beach County, even
14 though they did look at these ballots and do their best to
15 count them, once we contest those ballots, once we put that
16 at issue in a contest proceeding before a Court, it is up to
17 the Court to judge those ballots, and to judge those ballots
18 de novo.

19 And there are two or three fundamental legal issues.
20 One fundamental legal issue is whether, when you look at the
21 Palm Beach ballots, are you looking at them de novo, or are
22 you looking at them from an abuse of discretion standard?
23 That is a legal question. We think that legal question
24 needs to be resolved promptly and should not wait until
25 Saturday, and that doesn't have anything to do with bringing

1 in evidence or witnesses.

2 The second question is, if we've contested certain
3 ballots, and the Court rules it's going to look at those
4 ballots to judge our contest, do you have to look at all of
5 the ballots in the county or all of the ballots in the
6 state? That's a legal question, too. There isn't any
7 evidence that will help the Court decide that question.

8 We think those two legal issues need to be addressed
9 as promptly as possible, because until those legal issues
10 are addressed, you can't begin to address whatever factual
11 issues have to be addressed, and you can't begin the
12 counting. If we're right on those issues, then the counting
13 ought to start promptly. If we're wrong on those issues,
14 then there is other evidence that has to be taken.

15 But either way, to wait until Saturday to address
16 those legal issues we're concerned is tantamount to making
17 sure that we never finish this. Play out the date just a
18 little bit, Your Honor. Let's say the Court waits until
19 Saturday to have this hearing, and let's say the Court
20 concludes first that we're right, that it's not a matter of
21 abuse of discretion, it is a matter of counting the ballots.

22 Now you've got to start that count Sunday or Monday,
23 presumably, and in order to get that count done and have the
24 arguments that the Court is going to need to have, you're
25 not going to have time to get that done, starting that late,

1 in time to provide any meaningful appellate review in the
2 Florida Supreme Court.

3 THE COURT: How many were they counting a day in
4 Palm Beach?

5 MR. BOIES: They were averaging, Broward and
6 Palm Beach together were averaging in the range of 180 to
7 230 ballots an hour, as I understand. And if you sort of
8 take a mid point of 200 ballots an hour, that is pretty
9 fast.

10 If the Court -- and this is why I say one of the
11 issues is, how is the Court -- if the Court is going to
12 count, if the Court decides we're right and the ballots need
13 to be counted, how is the Court going to count. And unless
14 there is some way of expediting that, you're going to run
15 out of time.

16 Take the second illustration in which the Court holds
17 its abuse of discretion standard. You're going to have to
18 start reviewing the Miami-Dade ballots in any event, because
19 nobody has looked at those. There is no discretion
20 exercised. So while the Court is hearing evidence on the
21 abuse of discretion standard for Palm Beach, no ballots, not
22 even the Dade ballots, are going to be counted unless the
23 Court has set up some procedure to do that.

24 So we think it's critically important that the Court
25 address now how this procedure is going to go and to the

1 extent that there are going to be ballots counted. And if
2 you divide it between the Palm Beach and the Dade County
3 ballots, as I think the Court is inclined to do, and I think
4 is appropriate, because there are somewhat different
5 situations there, you have a situation in which, with
6 respect to Dade, since we have contested those ballots,
7 there isn't any way to resolve that contest without somebody
8 looking at those ballots. There isn't any discretion here
9 because nobody looked at them the first time.

10 We respectfully suggest there is no reason to wait
11 until after Saturday to start the review on those
12 Dade County ballots. Dade County says they could have them
13 up here tomorrow night or Thursday. And as far as the
14 review of those ballots are concerned, you don't need the
15 lawyers here. You could do it on Friday while they are in
16 the Supreme Court.

17 So I think there are ways to expedite this, and I
18 can't think of a legitimate reason not to begin the counting
19 on Thursday, at least with respect to the Dade County
20 ballots.

21 MR. RICHARD: Your Honor, you have been very
22 accommodating, but if I may have one further comment and I
23 will not stand up again. I think Your Honor posed a very
24 cogent question when you said, what are the Canvassing
25 Boards for?

1 According to Mr. Boies, the only thing that has to
2 happen to force the Court to counting ballots is one
3 candidate has to protest what the Canvassing Board did, and
4 it's a de novo hearing. As a matter of fact, not just a
5 candidate, any voter, because Section 168 says, any voter
6 can file an election protest, election contest.

7 What he is saying is that all somebody has to say is,
8 we disagree with what the Canvassing Board did, and that's
9 it. We walk into the Court, and the Court begins, once
10 again, counting ballots. That is clearly not what is
11 intended by the Florida Statutes or the Florida Supreme
12 Court or anybody else.

13 And I have one other objection, which is this: My
14 client is entitled to a hearing before Mr. Boies' client
15 gets relief. And every time Your Honor gives him another
16 thing, he's back on his feet asking for one more thing that
17 you have already denied him twice.

18 Now, there is no reason for him to -- we've already
19 truncated this proceeding so that my client has little or no
20 time to prepare for a hearing, and we are entitled to a
21 hearing before Mr. Boies begins getting the relief that he
22 claims he's entitled to. No matter how he couches it in his
23 language, no matter what he says about this being a legal
24 argument, the fact is, he's asking this Court to give him
25 everything that he has requested, which is to begin another

1 ballot recount, before he has provided one iota of evidence
2 or permitted my client to have one hour of hearing on
3 whether or not he's entitled to that recount.

4 And there is no way that he could read the law of this
5 state to say that all he has to do is stand up and say, we
6 disagree with what the Canvassing Board did, and then the
7 Court has to begin, once again, counting ballots, what he
8 calls de novo. If that's the case, we don't need Canvassing
9 Boards, we don't need an election. All we need to do is
10 have people submit ballots to the courts, and let the courts
11 do the counting, and the courts will runs our elections in
12 this state.

13 With Your Honor's permission, I have a colleague who
14 has specific issues that he would like to suggest to the
15 Court that needs to be decided at an evidentiary hearing
16 before anybody starts counting ballots.

17 MR. BECK: Your Honor, this goes to Mr. Boies'
18 statements that the Court could at least begin counting, I
19 think it was ballots from one of the counties on Thursday
20 before any evidentiary hearing.

21 THE COURT: No, I think there is a misunderstanding
22 here, and I gather Mr. Richard objects to having any limited
23 argument on matters of law on Thursday, and I certainly can
24 appreciate that. They argued and truncated. It seems like
25 maybe the duck is working on you in the form of maihem,

1 perhaps unduly.

2 But we're not talking -- nobody needs to get excited.
3 I understand he's asked for it several times, to start
4 counting on Thursday, but I can't strip you of every right
5 that is known to anybody to accommodate that. We're not
6 going to start counting on Thursday unless they tell me that
7 I've got to do something else. And if they do, I hope they
8 give me some instructions on precisely how to carry out
9 their directions.

10 But, otherwise, I've got it structured here, and the
11 only thing we were talking about doing is, perhaps, dropping
12 back and, if it was possible, late Thursday have a limited
13 hearing on just matters that he says are matters of law.
14 But what happens is, we start getting some of these mixed up
15 with Palm Beach and Dade County, which they are a little
16 different, and there certainly may be different
17 considerations.

18 And we do have, perhaps, this aspect of there being
19 whether the standard is some abuse of discretion by the
20 Canvassing Board when they made their determinations,
21 whether or not they have abused it in the process that they
22 used. As opposed to, if we have another set that they have
23 never undergone any process at all, that they perhaps need
24 to be counted, or at least reviewed to determine whether
25 it's necessary to count.

1 And when you start talking about 10,000 ballots, and
2 if can count 2,400 or 2,500 a day, you're still talking
3 about five days. I understand the problem. And it may be,
4 under my schedule, he may be correct. If it takes five days
5 to do it, then it's going to go, say, from Saturday
6 afternoon or Sunday, if we get to that.

7 Hopefully, we can wave a magic wand and have the
8 Judges maybe magically appear or some Clerks of the Court.
9 But if you counted -- if it took five days through Thursday
10 of the 7th, then that's where we are. This is the time I've
11 given. And then any appellate process that is after that,
12 then somebody else will be burning the midnight oil, too.

13 MR. BECK: If you will bear with me for a couple of
14 moments, I need to alert this Court to what kind of hearing
15 we think would be required before the counting begins,
16 because we're going to have that hearing on Thursday.

17 He says that the question of what standard to apply is
18 purely a legal issue. I need to do this, also, Your Honor,
19 frankly, because Mr. Boies has stated that he's going to go
20 up on appeal on this, claiming it's a legal issue, and we
21 need to have stated on the record our position of this.

22 The fact is, Your Honor, if you ever get to the point
23 of examining ballots, you will, of course, be attempting to
24 ascertain the intent of the voter, and in order to do that,
25 you're going to have to develop standards, or someone is

1 going to have to develop standards. And, Your Honor, those
2 standards are going to have to come after an evidentiary
3 hearing where facts are presented, including expert
4 testimony, concerning how the machines work, for example,
5 what accounts for the undervotes.

6 Mr. Boies, today, has said that it's a pure question
7 of law that has been decided by other courts and no evidence
8 needs to be heard on it. And, yet, if anybody looks at his
9 witness list, what you see is that the vast majority of the
10 witnesses that he said he was going to call are, in fact,
11 directed to the factual question of what should you be
12 looking for on a ballot in order to ascertain voter intent.

13 He's got statisticians, whose purpose appears to be to
14 show that the percentage of undervotes using one kind of
15 machine is higher than another, therefore, if there is a
16 dimple, it must be some indication of a failed attempt to
17 vote. We have statisticians who says that theirs are wrong.

18 They have listed the designer of a voter machine as
19 one of their witnesses. My understanding it's not one of
20 the machines used here. He has previously said that certain
21 types of rubber, which he thinks were used in Palm Beach,
22 could present such a hard surface that someone would try to
23 vote and wouldn't be able to and would just make one of
24 these dimples.

25 I had a brief opportunity to talk to the people who

1 designed the actual machines that were used in this
2 election, and they say this man is wrong. They say he's
3 wrong about what kind of material, rubber was on the back,
4 and they also say he's wrong about whether an indentation
5 could be made with a stylist.

6 You're going to ask to decide whether these
7 indentations are votes. In fact, the gentleman I talked to,
8 again, I just had a brief opportunity before we came over
9 here, they indicated that there is a whole bunch of ways
10 that indentations and surface dislocations can be made on
11 ballots that have nothing to do with a voter with a stylist
12 in his or her hand trying to vote.

13 They've also listed as one of their witnesses a former
14 elections supervisor of Palm Beach, Mrs. Winchester, who has
15 said how the machines work and how they might malfunction
16 and leave dimples.

17 There is a man that I have not had a chance to talk
18 to, but one of my colleagues was reading the Wall Street
19 Journal, he handed this to me on my way over to court today,
20 and what it says in the Wall Street Journal is, "Palm Beach
21 County's voting equipment manager, Mr. Enus, disagrees with
22 Mrs. Winchester. He says the county's 5,000 voting machines
23 are in perfect working condition, and during the off season
24 remains stored in an air-conditioned warehouse. He argues,
25 it's easy, even with rigid backing strips, to punch cleanly

1 through a chad. Quote, it doesn't, make a dimple, Mr. Enus
2 says, it makes a hole every time."

3 Now, Your Honor, we think that before any Court
4 determines standards to ascertain whether a dimple that may
5 appear on a chad is in, in fact, a vote, the Court needs to
6 hear evidence about how these dimples can get on the chad,
7 where the dimples come from, and whether the theories that
8 underly the challenge that Mr. Boies is raising here have
9 any basis, in fact, or not. We don't think they do. We're
10 going to need to present evidence on that, even if Mr. Boies
11 does not. Thank you, Your Honor.

12 MR. KLOK: Your Honor, one last point. Thursday,
13 Your Honor, at the close of business is when we are supposed
14 to be filing our answers, and Friday, of course, we're in
15 the Supreme Court, and on Thursday, as well.

16 The United States Court of Appeal today entered an
17 order requiring the Secretary of State to basically send
18 extensive materials up on the balloting that was done in the
19 State of Florida by counties to determine overvotes and
20 undervotes. As Your Honor knows, everyone is in the act.

21 The fact is, it's not possible to have this kind of
22 mini hearing on a Thursday afternoon before we've even had
23 an opportunity to file our defenses.

24 THE COURT: I'm going to leave the schedule the same.
25 In looking at it with what all the competing interests here

1 and the equity, I think this is the best I can fashion to at
2 least be unfair to both sides equally. And I'm trying to
3 deal with it so that equitably each of you, under these
4 circumstances, are accorded the best accommodation that can
5 be accorded. I don't see how I can do anything else.

6 I think that we've got it interwoven. We might as
7 well hear it at one hearing, any assertions as to matters of
8 law, whether these questions are matters of law, or if they
9 are matters that require evidence.

10 As I indicated at the outset, I don't know when we
11 started, but it was sometime ago, that everybody could get
12 what evidence you felt was going to be necessary. If you
13 had a position if you wanted to assert that required
14 evidence, then have it so we can proceed, and we will go
15 just as long as somebody is still standing on Saturday,
16 beginning at nine.

17 And then if we get into any prospective ballot
18 counting, we will do the best we can and finish just as
19 expeditiously as possible. I don't know of anything else
20 that I can consider here today, except there is one item,
21 and as we've had the discussion, there has not been on the
22 proposed exhibits, and I haven't seen the exhibits of the
23 Defendants, but I would like to direct that somebody produce
24 the voting machines that they used in Palm Beach and
25 Dade County.

1 I don't know how big these things are. I don't know
2 what perhaps I'm asking. Perhaps we need to see just what
3 it was that was being operated, or at least an example of
4 it, along with any attendant instructions or whatever that
5 were given concerning the usage of the machines. Let's have
6 it so we can look at that, along with all of the other
7 items.

8 MR. BOIES: I think we agree, Your Honor. There are
9 some different models, and we'll work out a way of getting
10 the Court something that is typical.

11 MR. BECK: I think I have a reasonable idea of which
12 models were used in which counties. I think we're going to
13 need, however --

14 THE COURT: How big are these things?

15 MR. BECK: They are not very big, Your Honor. That is
16 not going to be nearly the problem that the ballots are. I
17 think we do need to bring up the actual machines from
18 Palm Beach County, because, unless Mr. Boies isn't going to
19 put on any evidence, what he's indicated in press briefings
20 is that the rubber gets real hard and that means somebody
21 can't punch through --

22 THE COURT: You can bring whatever. All I ask is for
23 is somebody to get me something, at least one of the
24 machines used in those places. I'm not asking whether it
25 was identical. It's just visual purposes.

1 MR. BECK: I've got the machines I can bring it.

2 MR. BOIES: We can do that, Your Honor. And perhaps
3 we could stipulate that representatives of both sides could
4 inspect the machines that were actually used and try to
5 select, see if we can agree on bringing one or more.

6 THE COURT: What I would like is whatever was there
7 that a typical voter in each of those counties would have
8 looked at and utilized when a voter in one of those counties
9 voted.

10 MR. BECK: We agree to it, but they are not our
11 machines.

12 THE COURT: My friend Mr. Greenburg could come to the
13 rescue, perhaps.

14 MR. GREENBURG: Your Honor, we will send it up with
15 our ballots, along with all of the instructions of the
16 sample ballot.

17 THE COURT: I really like that guy. You're going to
18 send up a sample what?

19 MR. GREENBURG: A voting booth, a sample voting booth,
20 and a ballot that we had posted at the briefings.

21 MR. McMAHON: We can do the same for Palm Beach
22 County. We can send a sample of each.

23 THE COURT: They are going to bring those. Now, it's
24 going to be up to these parties, if somebody is objecting to
25 whatever it is that they are going to do, they are going to

1 bring us what they had, and I'm not going to hear anybody
2 sitting up here that didn't bring anything object to
3 whatever it is they brought. I'm asking them to bring me
4 what was presented to a voter down there.

5 It's going to behoove anybody that wants to object to
6 whatever it is they brought to get yourself down there to
7 look at it, and if you've got an objection, see if you can
8 get it corrected before they bring it.

9 MR. BOIES: We'll do that.

10 MR. BECK: We will have somebody go and make an
11 arrangement with the folks from the county so we can both be
12 there and look and agree that it's a fine machine.

13 THE COURT: I hesitate to ask this, but is there
14 anything else that we need to cover? If not, thank you very
15 much.

16 (HEARING CONCLUDED AT 7:20 P.M.)

17 *****
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25

CERTIFICATE OF REPORTER

STATE OF FLORIDA:

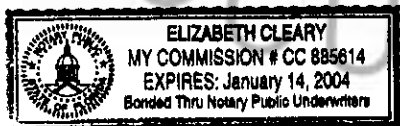
COUNTY OF LEON:

I, **LIZ CLEARY**, Certified Court reporter, and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing hearing was taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed, via computer, under my supervision, and the foregoing pages numbered 1, through 74 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 29th day of NOVEMBER 2000, IN THE CITY OF TALLAHASSEE, COUNTY OF LEO STATE OF FLORIDA.



Liz Cleary
LIZ CLEARY, CCR
 519 East Park Avenue
 Tallahassee, Florida 32301
 (850)222-5508

ASSOCIATED COURT REPORTERS - (850) 222-5508

November 28, 2000

**Order Requiring the Delivery of Certain Ballots from Palm Beach
and Miami-Dade Counties**

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 00-2808

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States
For President of the United States, et al.,

Plaintiffs,

v.

KATHERINE HARRIS, as Secretary
of State, State of Florida, et al.,

Defendants.

FILED
00 NOV 29 PM 4:52
DAVE LANE
CLERK, CIRCUIT COURT
LEON COUNTY, FLORIDA

**ORDER REQUIRING THE DELIVERY OF CERTAIN BALLOTS
FROM PALM BEACH AND MIAMI-DADE COUNTIES**

This matter came before the Court for a hearing on November 28, 2000. Having heard the arguments of counsel and being otherwise fully advised of the premises, it is hereby

ORDERED and ADJUDGED as follows:

1. Defendant David Leahy, Supervisor of Elections for Miami-Dade County, in response to Plaintiffs' Request for Production, shall produce to the Clerk of the Circuit Court of Leon County, Florida (hereinafter the "Clerk") the approximately 10,750 "undervote" ballots cast in the presidential election in Miami-Dade County on November 7, 2000, as well as the final precinct tally sheets.
2. Defendant Theresa LePore, Supervisor of Elections for Palm Beach County, in response to Plaintiffs' Request for Production, shall produce to the Clerk the approximately 3300 "disputed" ballots cast in Palm Beach County for the general election held on November 7, 2000, as well as the final precinct tally sheets.

3. These ballots shall be secured, transported by police vehicle, and delivered to the Clerk by officers of the Miami-Dade Police Department and Palm Beach County Sheriff's Office, respectively. The ballots shall be delivered to the Clerk by ~~12:00 Noon~~ ^{5:00 P.M.} on Friday, December 1, 2000.

4. Defendants Leahy and Lepore shall coordinate the delivery of the ballots with the Clerk. The Clerk shall confirm the particular time and manner of the delivery to the courthouse, and shall keep the Clerk's office open to accept delivery of the ballots immediately upon their arrival. Upon such delivery, the Clerk shall execute a receipt in the form attached to this Order, provide a copy to the officers, and file a copy in the record of this case, evidencing that the ballots have been delivered and received, and that the Clerk has assumed custody, control, and responsibility over the ballots.

5. Defendants Leahy and Lepore shall also deliver sample voting machines, ballots, and instructions used in the elections in their respective counties including those requested by the parties.

6. The Plaintiffs shall reimburse the Defendant counties for the expenses incurred and their compliance with Plaintiff's request as granted in this Order.

7. In addition all remaining ballots cast in Palm Beach County and Miami-Dade County for President of the United States in the 2000 general election shall be sent separately pursuant to the same procedures set forth in this Order as soon as practicable following the delivery of the ballots previously requested by the Plaintiffs. Nothing in this paragraph shall prevent the ballots requested by the Plaintiffs from being sent immediately today. Defendants George Bush and Richard Cheney shall reimburse the defendant counties for the expenses incurred in their compliance with this paragraph.

8. Nothing in this Order shall be construed as waiving any party's evidentiary objections concerning these ballots in the trial of this matter.

DONE AND ORDERED in Chamber in Leon County on this 29th day of November 2000.



Honorable Judge N. Sanders Saul

cc: Copies furnished to all parties in this case





MIAMI-DADE COUNTY

BALLOT TRANSFER CASE TRANSMITTAL FORM
NOVEMBER 7, 2000 PRESIDENTIAL UNDERVOTED BALLOTS

Ballot Transfer Cases for the below listed precincts were given to _____
at the _____ at _____ on _____
LOCATION TIME DATE

Precincts

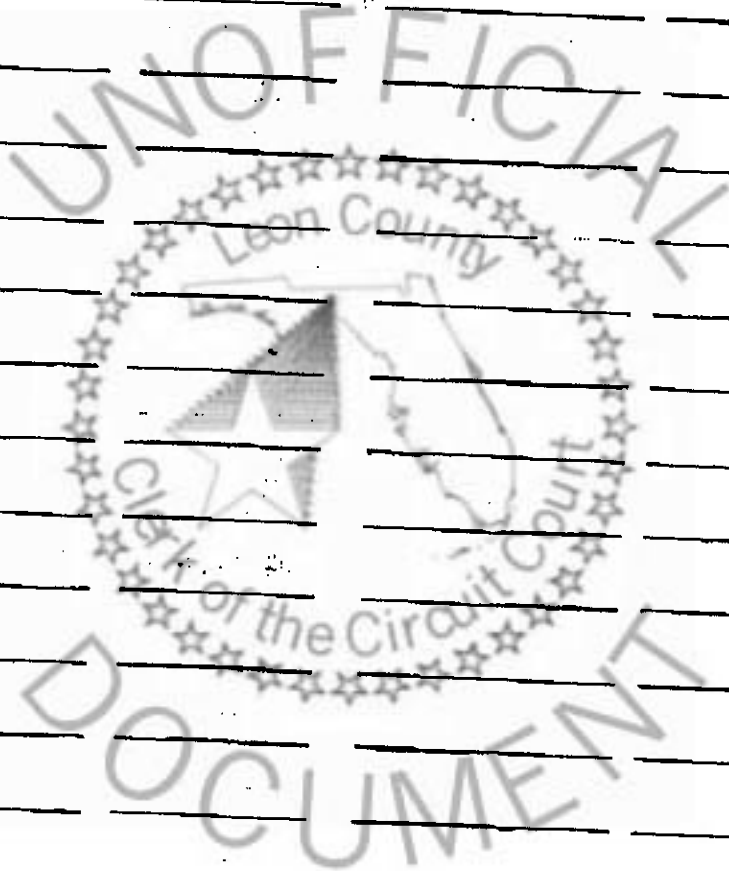
Seal

Seal

Precincts

Seal

Seal



Ivy Korman, Representative of the

November 30, 2000

Gore Motion to Correct Certified Results of Nassau County Election

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for Vice President of the United States,

Plaintiffs,

v.

CASE NO.: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, and SECRETARY
OF AGRICULTURE BOB CRAWFORD, SECRETARY
OF STATE KATHERINE HARRIS AND L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF
ELECTIONS, individually and as members of and as
THE FLORIDA ELECTIONS
CANVASSING COMMISSION,

and

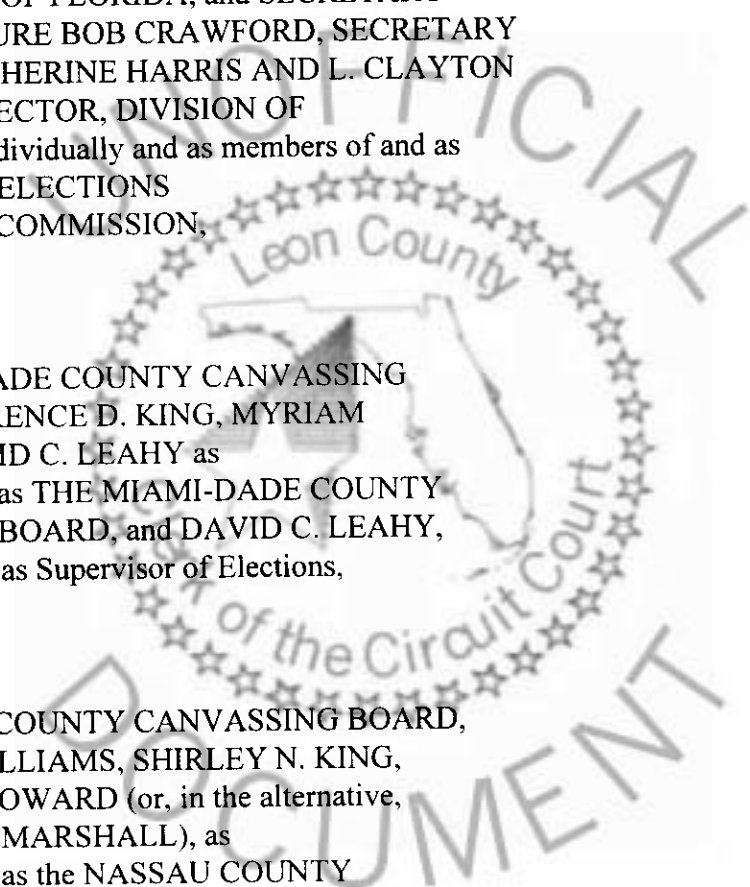
THE MIAMI-DADE COUNTY CANVASSING
BOARD, LAWRENCE D. KING, MYRIAM
LEHR and DAVID C. LEAHY as
members of and as THE MIAMI-DADE COUNTY
CANVASSING BOARD, and DAVID C. LEAHY,
individually and as Supervisor of Elections,

and

THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING,
AND DAVID HOWARD (or, in the alternative,
MARIANNE P. MARSHALL), as
members of and as the NASSAU COUNTY
CANVASSING BOARD, and SHIRLEY N. KING,
individually and as Supervisor of Elections,



FILED
JAN 11 1999
CLERK OF COURT
LEON COUNTY, FLORIDA



and

THE PALM BEACH COUNTY CANVASSING BOARD,
THERESA LEPORE, CHARLES E. BURTON
AND CAROL ROBERTS, as members
of and as the PALM BEACH COUNTY CANVASSING BOARD,
and THERESA LEPORE, individually and as Supervisor
of Elections,

and

GEORGE W. BUSH, Nominee of
the Republican Party of the United States
for President of the United States and
RICHARD CHENEY, Nominee of the
Republican Party of the United States for
Vice President of the United States,

Defendants.

PLAINTIFFS' MOTION TO RESOLVE FACTUAL
AND LEGAL ISSUES OF COUNT III
WITH MEMORANDUM OF LAW

The Plaintiffs, Albert Gore, Jr., and Joseph Lieberman, move pursuant to Florida Rules of Civil Procedures 1.100, 1.200, and 1.510(d) and Section 102.168(8), Florida Statutes (2000), for an order determining material facts that exist without substantial controversy and the correct application of the governing law to those facts.

Introduction

This Court's authority to determine purely legal questions at the outset of the final hearing is further predicated upon the broad and flexible power to fashion appropriate procedures in determining an election contest. That statute provides:

The circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent and correct any alleged wrong, and to provide any relief appropriate under the circumstances.

Section 102.168(8), Florida Statutes.

Because Florida law specifically empowers the Circuit Judge to fashion appropriate orders for determining how issues are to be resolved, this Court clearly has the authority to adjudicate purely legal issues that rely on undisputed facts without any necessity for the further delay of an evidentiary hearing. Indeed, even when facts are disputed, a situation not confronted by this motion, this Court is empowered to limit the presentation of testimony so that the issues can be promptly resolved:

However, the Court in its discretion may limit the time to be consumed in taking testimony, with a view therein to the circumstances of the matter and to the proximity of any succeeding primary or other election.

Section 102.168(7), Florida Statutes. Further underscoring the statutory duty to determine issues in an election contest as promptly as possible is the legislative mandate for an immediate hearing:

Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing.

Section 102.168(7), Florida Statutes. Thus, the unusual flexibility over procedure and remedy conferred upon this Court, combined with the imperative for immediacy, clearly establishes the Court's authority to proceed directly to the purely legal issues, based on uncontradicted evidence, while limiting the taking of testimony to only those issues encompassing substantial disputed facts.

Grounds for Motion

In support of this Motion Plaintiffs show:

- I. The material facts related to Count III are not in substantial controversy. They can and should be resolved by this Court. This action will expedite resolution of this critical case.
- II. Count III alleges that by certifying the results of the November 7, 2000 ballot count instead of the results of the recount mandated by Section 102.141(4), Florida Statutes, conducted on November 8, 2000 the Nassau County Canvassing Board received illegal votes of sufficient number to change or place in doubt the outcome of the election.
- III. The material facts that are without substantial controversy are:
 - a. On November 7, 2000, the Nassau County Supervisor of Elections informed the Department of State that unofficial returns of the general election for President and Vice President of the United States in Nassau County showed Gore/Lieberman with 6,952 votes and Bush/Cheney with 16,404 votes.
 - b. On November 8, 2000, the Nassau County Canvassing Board conducted the machine recount of ballots mandated by section 102.141(4), Florida Statutes (2000).
 - c. The statutorily mandated machine recount produced returns of 6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney, a net gain of 51 votes for Gore/Lieberman.

- d. On November 8, 2000, the Nassau County Canvassing Board certified, to the Department of State, the returns based on the statutorily mandated machine recount. Those official results were 6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney.
- e. On November 24, 2000, the Nassau County Canvassing Board met without the notice required by section 286.011, Fla. Stat. (2000).
- f. David Howard, a member of the Board, did not attend the November 24, 2000 meeting.
- g. Section 102.141(1) of the Florida Statutes sets forth the rules to be followed to select a replacement Board member in the event that a member of the Canvassing Board is unable to serve.
- h. Subsections (1)(a), (b), (c) and (d) of Section 102.141, Florida Statutes, provide that a person who is a candidate who has opposition in the election being canvassed is not eligible to be appointed as a substitute member of the Canvassing Board canvassing that election.
- i. On November 24, 2000, Marianne Marshall, a Nassau County Commissioner, served as a substitute Board member in place of David Howard.
- j. Marianne Marshall was a candidate with opposition in the November 7, 2000 election.
- k. As of the November 24th Canvassing Board meeting, no party, candidate or elector had protested the results from the statutorily mandated recount on November 8.

- l. At the November 24 meeting, the Nassau County Canvassing Board decided to submit a new certification to the Department of State, containing the unofficial election night returns (Gore/Lieberman 6,952 votes and Bush/Cheney 16,404 votes) instead of the returns of the statutorily mandated machine recount (6,879 votes for Gore/Lieberman and 16,280 votes for Bush/Cheney).
 - m. The Board thus changed its certification and certified the same November 7 results that it had previously rejected as incorrect in place of the November 8 machine recount returns that it had certified on November 15.
 - n. The Nassau County Canvassing Board transmitted this new certification to the Department of State on Friday November 24, 2000.
 - o. The November 24, 2000 certification is signed by Marianne Marshall as "Chairman, Board of County Commissioners".
- IV. The following attached exhibits establish the facts enumerated in paragraphs a-d; j; and m-o are without substantial controversy.
- | | |
|-----------|--|
| Exhibit A | Initial returns reported by Nassau County Canvassing Board to the Secretary of State, November 7, 2000 |
| Exhibit B | Certificate of County Canvassing Board, dated November 7, 2000 |
| Exhibit C | Machine recount returns reported by Nassau County Canvassing Board to the Secretary of State, November 8, 2000 |
| Exhibit D | Certificate of County Canvassing Board Recount, dated November 8, 2000 |
| Exhibit E | Certificate of County Canvassing Board, dated November 24, 2000 |
| Exhibit F | Certification of Elections Canvassing Commission dated November 26, 2000 |

These exhibits are public record and therefore admissible as direct evidence under section 90.803(8), Florida Statutes (2000). In addition, because there is no official transcript available for the November 24 meeting of the Canvassing Board, the affidavit of John Cascone, Esq., an attorney who represented the Florida Democratic Party at the November 24 meeting is attached as Exhibit G. It establishes that the facts in paragraphs e, f, i, k, l and m are without substantial controversy. The matters in paragraphs g and h are subject to judicial notice, section 90.201(1), Florida Statutes (2000), and are therefore without substantial controversy.

Florida Rule of Civil Procedure 1.510(d) authorizes a court to enter an order specifying that certain material facts exist without substantial controversy and that the facts so specified are deemed established at trial. *Federal Insurance Company v. Mercer*, 237 So. 2d 243 (Fla. 4th DCA 1970) (details of automobile purchase established). The court may determine which facts are without substantial controversy by examining the evidence, examining the pleadings, and interrogating counsel. Fla. R. Civ. Pro. 1.510(d).

Once the facts without substantial controversy are determined the court should determine as a matter of law what follows from those facts. *Pickles v. McArthur*, 240 So. 2d 862 (Fla. 3rd DCA 1970) (factual determination that employees did not commit torts in the course and scope of their employment properly led to legal conclusion that their employer could not be liable for the torts.); *White v. Harmon Glass Service of Florida, Inc.*, 316 So. 2d 599 (Fla. 4th DCA, 1975) (trial court properly determined covenant not to compete was sufficient and that White breached it).

What follows from the Nassau County facts is that -- as a matter of law -- the certification of state wide returns of the year 2000 Presidential election must include returns obtained from the

statutorily mandated recount from Nassau County of 6,879 votes cast for Al Gore and Joe Lieberman and 16,280 votes cast for George Bush and Richard Cheney as reported on November 8, 2000.

On November 8, the Nassau County Canvassing Board recounted all ballots cast for President and Vice President in the November 7, 2000 general election as Section 102.141(4) requires. In a mandatory recount, a canvassing board must "examine the counters on the machines or the tabulation of the ballots cast in each precinct in which the office or issue appeared on the ballot and determine whether the returns correctly reflect the votes cast." §102.141(4) Fla. Stat. (2000). Where there is a discrepancy between the initial election night returns and the returns from the statutorily mandated recount, Section 102.101(4) *requires* the canvassing board to certify the vote totals obtained in the statutorily mandated recount: "If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such machines or the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly." Id.

As the Court of Appeals held in *Morse v. The Dade County Canvassing Board*, 456 So.2d 1314 (Fla. 3rd DCA, 1984), "the canvassing board is a neutral body whose functions are ministerial in nature." Particularly in the absence of any protest by a proper party in interest, the Nassau Canvassing Board had no authority or discretion *sua sponte* to make any determination that the initial election night returns are more reliable than the results of the statutorily mandated recount. The *Morse* court held that "[e]ven where there is a discrepancy between the tabulation of ballots and the returns, the statute requires that tabulation of ballots be presumed correct and that the board canvass the votes accordingly." Id.

The law required the Nassau County Canvassing Board to certify to the Secretary of State the results of the "tabulation of the ballots" determined in the statutorily mandated recount. The Board certified those results on November 8. The Board's November 24th revised certification reverting to the election night "returns" resulted in the inclusion of a number of illegal votes and the exclusion of a number of legal votes that, in combination with the other votes at issue in this proceeding, are sufficient to change or place in doubt the result of the election. The Board's November 24th revised certification reverting to the election night "returns" unless remedied will cause a person other than the successful candidate to be elected to office.

The refusal of the Nassau County Canvassing Board to certify returns reporting the votes for candidates identified in the recount mandated by section 102.141(4) is misconduct sufficient to change or place in doubt the result of the election.

As a matter of law, the November 24 meeting was illegal because (i) no proper public notice was provided as required by section 286.011 Florida Statutes, and (ii) the Board was illegally constituted pursuant to Section 102.141(1) Florida Statutes because Canvassing Board member Marianne Marshall was a candidate for County Commissioner, District 5, in a contested election.

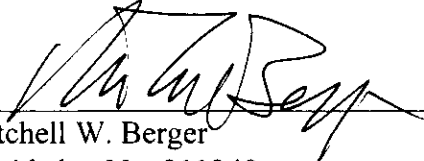
The failure of the Nassau County Canvassing Board to provide required legal notice of the November 24 meeting, and the illegal composition of the Canvassing Board at such meeting independently renders the November 24 certification null and void.

WHEREFORE, Plaintiffs move the Court to determine that Secretary of State and the Elections Canvassing Commission must include in the final certification of presidential votes in the State of Florida the 16,280 votes for George W. Bush and Richard Cheney and the 6,879 votes for Al

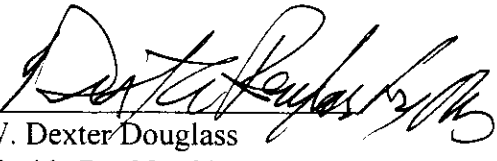
Gore and Joe Lieberman as reflected on the valid certification submitted by the Nassau County Canvassing Board on November 8, 2000.

Respectfully submitted this 30th day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN



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Facsimile: 850/224-3644



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 30th day of November, 2000 to the following:

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Greenberg Traurig
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Tallahassee, FL 32301
for Governor Bush

Andrew McMahon
Palm Beach County Attorney Office
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West Palm Beach, FL 33401-4705
for Palm Beach Canvassing Board

Deborah Kearney, General Counsel
Florida Department of State
400 South Monroe Street, PL 02
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for Secretary Katherine Harris and
the Elections Canvassing Committee

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Bruce S. Rogow, P.A.
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Ft. Lauderdale, Florida 33394
for Palm Beach Canvassing Board

Donna E. Blanton
Steel Hector & Davis
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for Secretary Katherine Harris and
the Elections Canvassing Committee

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Assistant County Attorney
111 N.W. 1st Street
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Terrell C. Madigan
Harold R. Mardenborough, Jr.
McFarlain Wiley Cassidy & Jones
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for Intervenor Butler

Ben Ginsburg
State Republican Headquarters
420 West Jefferson Street
Tallahassee, FL 32301
for the Republican Party

R. Frank Myers
Messer Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301
for Intervenor Named West Florida Voters

Craig Meyer
Florida Department of Agriculture and
Consumer Services
The Capitol
Tallahassee, FL 32399

Shirley King
Nassau County Supervisor of Elections
11 North 14th Street, Suite 11
Fernandina Beach, FL 32034

Gary Rutledge
Rutledge, Ecenia, et al
4th Floor, 215, S. Monroe Street
Tallahassee, Florida 32301


Attorney 



NOVEMBER 7, 2000

** Final Report **

Number 10.

Printed on 11/08/00 at 02:16 Page

PRESIDENT AND VICE PRESIDENT				22/ 22 100.0	COUNTY - CLERK OF THE CIRCUIT COURT	22/ 22 100.0
BUSH/CHENEY	REP	16404	69.0		J.M. OXLEY, JR.	REP 12620 53.1
GORE/LIEBERMAN	DEM	6952	29.2		T.J. GREESON	DEM 11158 46.9
BROWNE/OLIVIER	LIB	63	0.3			
NADER/LADUKE	GRN	255	1.1		SHERIFF	22/ 22
HARRIS/TROWE	SWR	0	0.0			100.0
HAGELIN/GOLDHABER	LAW	8	0.0			
BUCHANAN/FOSTER	REF	90	0.4		W.R. GEIGER	REP 15806 65.0
MCREYNOLDS/HOLLIS	SOC	4	0.0		K.A. FARMER	DEM 7639 31.4
PHILLIPS/FRAZIER	CNS	3	0.0		ALAN BURNLEY	NPA 886 3.6
MOOREHEAD/LA RIVA	WWD	3	0.0			
UNITED STATES SENATOR				22/ 22 100.0	PROPERTY APPRAISER	22/ 22 100.0
BILL MCCOLLUM	REP	14413	61.6		JAMES PAGE	REP 16177 68.4
BILL NELSON	DEM	8489	36.3		GILBERT LEE	DEM 7472 31.6
JOE SIMONETTA	LAW	52	0.2		TAX COLLECTOR	22/ 22
JOEL DECKARD	REF	67	0.3			100.0
WILLIE LOGAN	NPA	198	0.8			
ANDY MARTIN	NPA	45	0.2		TOM WILLIAMS	REP 9992 42.0
DARRELL MCCORMICK	NPA	143	0.6		GWENDOLYN MILLER	DEM 13781 58.0
U. S. REPRESENTATIVE 4TH CONGRESSIONAL DIST.				22/ 22 100.0	SUPERVISOR OF ELECTIONS	22/ 22 100.0
ANDER CRENSHAW	REP	15942	68.5		VICKI CANNON	REP 13232 56.4
TOM SULLIVAN	DEM	7018	30.1		JUDY TINER	DEM 10248 43.6
DEBORAH PUESCHEL	NPA	328	1.4			
STATE TREASURER				22/ 22 100.0	COUNTY COMMISSIONER DISTRICT #1	22/ 22 100.0
TOM GALLAGHER	REP	16554	72.4		NICK DEONAS	REP 12864 54.7
JOHN COSGROVE	DEM	6299	27.6		LEXI ALVAREZ	DEM 10660 45.3
STATE COMMISSIONER OF EDUCATION				22/ 22 100.0	COUNTY COMMISSIONER DISTRICT #3	22/ 22 100.0
CHARLIE CRIST	REP	14808	66.5		VICKI SAMUS	REP 14167 61.2
GEORGE SHELDON	DEM	7174	32.2		KEITH SAWYER	DEM 8966 38.8
VASSILIA GAZETAS	NPA	295	1.3		COUNTY COMMISSIONER DISTRICT #5	22/ 22 100.0
STATE REPRESENTATIVE 12TH HOUSE DISTRICT				22/ 22 100.0	MARIANNE MARSHALL	REP 13920 58.6
AARON BEAN	REP	16679	69.4		JIMMY HIGGINBOTHAM	DEM 8640 36.3
BOBBY HART	DEM	7349	30.6		WILLIAM CAULKINS	NPA 1213 5.1

UNOFFICIAL RESULTS

EXHIBIT

A

PENGAD Bayonne N.J.

OCEAN HIGHWAY & PORT AUTHORITY, DISTRICT 1	22/ 22 100.0	FIRST DISTRICT COURT OF APPEAL	22/ 22 100.0
DANNY LEEPER JAMES GRAVES	REP 14666 68.8 DEM 6659 31.2	RETAIN JUDGE WEBSTER	YES 10899 61.5 NO 6821 38.5
AMELIA IS. MOSQUITO CONTROL, GROUP 1	8/ 8 100.0	SCHOOL BOARD MEMBER DISTRICT 4	22/ 22 100.0
SARAH BELL MILT SHIRLEY	4173 44.1 5291 55.9	JIM ADAMS MICHAEL FRANKLIN	11783 60.1 7831 39.9
NASSAU SOIL & WATER CONSERVATION DIST. GRP.3	22/ 22 100.0	CONSTITUTIONAL AMENDMENT NO. 1	22/ 22 100.0
STEVEN LANE MICHAEL STOKES	7972 44.9 9782 55.1	YES 11118 48.8 NO 11662 51.2	
NASSAU SOIL & WATER CONSERVATION DIST. GRP.5	22/ 22 100.0	CIRCUIT COURT JUDGE REFERENDUM NO. 2	22/ 22 100.0
TOMMY BOLTON DEAN WOEHRLE	11346 66.8 5627 33.2	YES 6825 30.0 NO 15948 70.0	
JUSTICE OF THE SUPREME COURT	22/ 22 100.0	COUNTY COURT JUDGE REFERENDUM NO. 3	22/ 22 100.0
RETAIN JUSTICE LEWIS	YES 11106 61.2 NO 7028 38.8	YES 5756 25.5 NO 16818 74.5	
JUSTICE OF THE SUPREME COURT	22/ 22 100.0	APPOINT SUPERINTENDENT OF COUNTY SCHOOL DIST.	22/ 22 100.0
RETAIN JUSTICE PARIENTE	YES 10868 61.1 NO 6930 38.9	YES 4932 21.5 NO 18018 78.5	
JUSTICE OF THE SUPREME COURT	22/ 22 100.0	Total Registration And Turnout	
RETAIN JUSTICE QUINCE	YES 10763 61.1 NO 6852 38.9	Registration Turnout	35170 25387 72.2
FIRST DISTRICT COURT OF APPEAL	22/ 22 100.0		
RETAIN JUDGE BROWNING	YES 10993 61.9 NO 6752 38.1		
FIRST DISTRICT COURT OF APPEAL	22/ 22 100.0		
RETAIN JUDGE ERVIN	YES 10716 61.1 NO 6833 38.9		

**UNOFFICIAL
RESULTS**

CERTIFICATE OF COUNTY CANVASSING BOARD
STATE OF FLORIDA
Nassau County

We, the undersigned, HONORABLE ROBERT E. WILLIAMS, County Judge,
HONORABLE SHIRLEY N. KING, Supervisor of Elections, and
HONORABLE DAVID HOWARD, Chairman of the Board of County
Commissioners, constituting the Board of County Canvassers in and for said
County, do hereby certify that we met on the 7TH day of November,
A.D., 2000, and proceeded publicly to canvass the votes given for the several
offices and persons herein specified at the **General Election** held on the 7th day
of November, A.D., 2000 as shown by the returns on file in the office of the
Supervisor of Elections. We do hereby certify from said returns as follows:

For President of the United States, the whole number of votes cast was
23,782 of which number

George W. Bush and Dick Cheney (REP) received	<u>16,404</u>	votes
Al Gore and Joe Lieberman (DEM) received	<u>6,952</u>	votes
Harry Browne and Art Olivier (LIB) received	<u>63</u>	votes
Ralph Nader and Winona LaDuke (GRE) received	<u>255</u>	votes
James Harris and Margaret Trowe (SWP) received	<u>0</u>	votes
John Hagelin and Nat Goldhaber (LAW) received	<u>8</u>	votes
Pat Buchanan and Ezola Foster (REF) received	<u>90</u>	votes
David McReynolds and Mary Cal Hollis (SPF) received	<u>4</u>	votes
Howard Phillips and J. Curtis Frazier (CPF) received	<u>3</u>	votes
Monica Moorehead and Gloria La Riva (WWP) received	<u>3</u>	votes
May Chote and Miriam E. Lancaster (WRI) received	<u>0</u>	votes
Ken. C. McCarthy and Frank Beifus (WRI) received	<u>0</u>	votes

Department of the Circuit Court
DOCUMENT

EXHIBIT

B

For United States Senator, the whole number of votes cast was
23,407 of which number

Bill McCollum (REP) received	<u>14,413</u>	votes
Bill Nelson (DEM) received	<u>8,489</u>	votes
Joe Simonetta (LAW) received	<u>52</u>	votes
Joel Deckard (REF) received	<u>67</u>	votes
Willie Logan (NPA) received	<u>198</u>	votes
Andy Martin (NPA) received	<u>45</u>	votes
Darrell L. McCormick (NPA) received	<u>143</u>	votes
"Nikki O." (WRI) received		votes
Olen C. Faulk (WRI) received		votes
Richard Grayson (WRI) received		votes
Brian Heady (WRI) received		votes
Argiris Malapanis (WRI) received		votes

For United States Representative, Fourth District, the whole number of votes cast was
23,288 of which number

Ander Crenshaw (REP) received	<u>15,942</u>	votes
Tom Sullivan (DEM) received	<u>7,018</u>	votes
Deborah Katz Pueschel (NPA) received	<u>328</u>	votes
Vince W. Ray (WRI) received	<u>0</u>	votes

For Treasurer, the whole number of votes cast was 22,853 of which number

Tom Gallagher (REP) received	<u>16,554</u>	votes
John Cosgrove (DEM) received	<u>6,299</u>	votes

For Commissioner of Education, the whole number of votes cast was
22,277 of which number

Charlie Crist (REP) received	<u>14,808</u>	votes
George H. Sheldon (DEM) received	<u>7,174</u>	votes
Vassilia Gazetas (NPA) received	<u>295</u>	votes

For State Representative, Twelfth District, the whole number of votes cast was
24,028 of which number

Aaron Bean (REP) received	<u>16,679</u>	votes
Bobby Hart (DEM) received	<u>7,349</u>	votes

For CLERK OF THE CIRCUIT COURT
the whole number of votes cast was 23,778 of which number

<u>J.M. OXLEY, JR.</u>	received	<u>12,620</u>	votes
<u>T.J. GREESON</u>	received	<u>11,158</u>	votes
	received		votes
	received		votes

For SHERIFF
the whole number of votes cast was 24,331 of which number

<u>W.R. GEIGER</u>	received	<u>15,806</u>	votes
<u>K.A. FARMER</u>	received	<u>7,639</u>	votes
<u>ALAN BURNLEY</u>	received	<u>886</u>	votes
	received		votes

For PROPERTY APPRAISER
the whole number of votes cast was 23,649 of which number

<u>JAMES PAGE</u>	received	<u>16,177</u>	votes
<u>GILBERT LEE</u>	received	<u>7,472</u>	votes
	received		votes
	received		votes

For TAX COLLECTOR
the whole number of votes cast was 23,773 of which number

<u>TOM WILLIAMS</u>	received	<u>9,992</u>	votes
<u>GWENDOLYN MILLER</u>	received	<u>13,781</u>	votes
	received		votes
	received		votes

For SUPERVISOR OF ELECTIONS
the whole number of votes cast was 23,480 of which number

<u>VICKI CANNON</u>	received	<u>13,232</u>	votes
<u>JUDY TINER</u>	received	<u>10,248</u>	votes
	received		votes
	received		votes

For COUNTY COMMISSIONER DST 1
the whole number of votes cast was 23,524 of which number

<u>NICK DEONAS</u>	received	<u>12,864</u>	votes
<u>LEXI ALVAREZ</u>	received	<u>10,660</u>	votes
	received		votes
	received		votes

For COUNTY COMMISSIONER, DST 3

the whole number of votes cast was 23,133 of which number

<u>VICKI SAMUS</u>	received	<u>14,167</u>	votes
<u>KEITH SAWYER</u>	received	<u>8,966</u>	votes
	received		votes
	received		votes

For COUNTY COMMISSIONER, DST 5

the whole number of votes cast was 23,773 of which number

<u>MARIANNE MARSHALL</u>	received	<u>13,920</u>	votes
<u>JIMMY HIGGINBOTHAM</u>	received	<u>8,640</u>	votes
<u>WILLIAM CAULKINS</u>	received	<u>1,213</u>	votes
	received		votes

For OCEAN, HIGHWAY & PORT AUTHORITY, DST 1

the whole number of votes cast was 21,325 of which number

<u>DANNY LEEPER</u>	received	<u>14,666</u>	votes
<u>JAMES GRAVES</u>	received	<u>6,659</u>	votes
	received		votes
	received		votes

For AMELIA ISLAND MOSQUITO CONTROL GROUP 1

the whole number of votes cast was 9,464 of which number

<u>SARAH BELL</u>	received	<u>4,173</u>	votes
<u>MILT SHIRLEY</u>	received	<u>5,291</u>	votes
	received		votes
	received		votes

For NASSAU SOIL & WATER CONSERVATION DST GRP 3

the whole number of votes cast was 17,754 of which number

<u>STEVEN LANE</u>	received	<u>7,972</u>	votes
<u>MICHAEL STOKES</u>	received	<u>9,782</u>	votes
	received		votes
	received		votes

For NASSAU SOIL & WATER CONSERVATION DST GRP 5

the whole number of votes cast was 16,973 of which number

<u>TOMMY BOLTON</u>	received	<u>11,346</u>	votes
<u>DEAN WOEHRL</u>	received	<u>5,627</u>	votes
	received		votes
	received		votes

For _____
the whole number of votes cast was _____ of which number _____

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

For _____
the whole number of votes cast was _____ of which number _____

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

For _____
the whole number of votes cast was _____ of which number _____

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

Robert E. Williams
County Judge

Shirley M. King
Supervisor of Elections

Chairman, Board of County Commissioners

Total ballots cast in Nassau County was 25,387 for a 72.2 percent turnout.

PRESIDENT AND VICE PRESIDENT				22/ 22 100.0	COUNTY - CLERK OF THE CIRCUIT COURT	22/ 22 100.0
BUSH/CHENEY	REP	16280	69.0		J.M. OXLEY, JR.	REP 0 0.0
GORE/LIEBERMAN	DEM	6879	29.2		T.J. GREESON	DEM 0 0.0
BROWNE/OLIVIER	LIB	62	0.3		=====	
NADER/LaDUKE	GRN	253	1.1		SHERIFF	22/ 22
HARRIS/TROWE	SWR	0	0.0			100.0
HAGELIN/GOLDHABER	LAW	7	0.0		-----	
BUCHANAN/FOSTER	REF	90	0.4		W.R. GEIGER	REP 0 0.0
McREYNOLDS/HOLLIS	SOC	4	0.0		K.A. FARMER	DEM 0 0.0
PHILLIPS/FRAZIER	CNS	3	0.0		ALAN BURNLEY	NPA 0 0.0
MOOREHEAD/LA RIVA	WWD	3	0.0		=====	
UNITED STATES SENATOR				22/ 22 100.0	PROPERTY APPRAISER	22/ 22 100.0
-----					-----	
BILL McCOLLUM	REP	0	0.0		JAMES PAGE	REP 0 0.0
BILL NELSON	DEM	0	0.0		GILBERT LEE	DEM 0 0.0
JOE SIMONETTA	LAW	0	0.0		=====	
JOEL DECKARD	REF	0	0.0		TAX COLLECTOR	22/ 22
WILLIE LOGAN	NPA	0	0.0			100.0
ANDY MARTIN	NPA	0	0.0		-----	
DARRELL McCORMICK	NPA	0	0.0		TOM WILLIAMS	REP 0 0.0
=====					GWENDOLYN MILLER	DEM 0 0.0
U. S. REPRESENTATIVE				22/ 22	=====	
4TH CONGRESSIONAL DIST.				100.0	SUPERVISOR OF ELECTIONS	22/ 22 100.0
-----					-----	
ANDER CRENSHAW	REP	0	0.0		VICKI CANNON	REP 0 0.0
TOM SULLIVAN	DEM	0	0.0		JUDY TINER	DEM 0 0.0
DEBORAH PUESCHEL	NPA	0	0.0		=====	
STATE TREASURER				22/ 22 100.0	COUNTY COMMISSIONER	22/ 22
-----					DISTRICT #1	100.0
-----					-----	
TOM GALLAGHER	REP	0	0.0		NICK DEONAS	REP 0 0.0
JOHN COSGROVE	DEM	0	0.0		LEXI ALVAREZ	DEM 0 0.0
=====					=====	
STATE COMMISSIONER OF EDUCATION				22/ 22 100.0	COUNTY COMMISSIONER	22/ 22
-----					DISTRICT #3	100.0
-----					-----	
CHARLIE CRIST	REP	0	0.0		VICKI SAMUS	REP 0 0.0
GEORGE SHELDON	DEM	0	0.0		KEITH SAWYER	DEM 0 0.0
VASSILIA GAZETAS	NPA	0	0.0		=====	
=====					COUNTY COMMISSIONER	22/ 22
STATE REPRESENTATIVE				22/ 22	DISTRICT #5	100.0
12TH HOUSE DISTRICT				100.0	-----	
-----					MARIANNE MARSHALL	REP 0 0.0
AARON BEAN	REP	0	0.0		JIMMY HIGGINBOTHAM	DEM 0 0.0
BOBBY HART	DEM	0	0.0		WILLIAM CAULKINS	NPA 0 0.0
=====					=====	

EXHIBIT

C

=====				=====			
OCEAN HIGHWAY & PORT		22/	22	FIRST DISTRICT		22/	22
AUTHORITY, DISTRICT 1		100.0		COURT OF APPEAL		100.0	
-----				-----			
DANNY LEEPER	REP	0	0.0	RETAIN	YES	0	0.0
JAMES GRAVES	DEM	0	0.0	JUDGE WEBSTER	NO	0	0.0
=====				=====			
AMELIA IS. MOSQUITO		8/	8	SCHOOL BOARD MEMBER		22/	22
CONTROL, GROUP 1		100.0		DISTRICT 4		100.0	
-----				-----			
SARAH BELL		0	0.0	JIM ADAMS		0	0.0
MILT SHIRLEY		0	0.0	MICHAEL FRANKLIN		0	0.0
=====				=====			
NASSAU SOIL & WATER		22/	22	CONSTITUTIONAL AMENDMENT		22/	22
CONSERVATION DIST. GRP.3		100.0		NO. 1		100.0	
-----				-----			
STEVEN LANE		0	0.0		YES	0	0.0
MICHAEL STOKES		0	0.0		NO	0	0.0
=====				=====			
NASSAU SOIL & WATER		22/	22	CIRCUIT COURT JUDGE		22/	22
CONSERVATION DIST. GRP.5		100.0		REFERENDUM NO. 2		100.0	
-----				-----			
TOMMY BOLTON		0	0.0		YES	0	0.0
DEAN WOEHRLE		0	0.0		NO	0	0.0
=====				=====			
JUSTICE OF THE		22/	22	COUNTY COURT JUDGE		22/	22
SUPREME COURT		100.0		REFERENDUM NO. 3		100.0	
-----				-----			
RETAIN	YES	0	0.0		YES	0	0.0
JUSTICE LEWIS	NO	0	0.0		NO	0	0.0
=====				=====			
JUSTICE OF THE		22/	22	APPOINT SUPERINTENDENT		22/	22
SUPREME COURT		100.0		OF COUNTY SCHOOL DIST.		100.0	
-----				-----			
RETAIN	YES	0	0.0		YES	0	0.0
JUSTICE PARIENTE	NO	0	0.0		NO	0	0.0
=====				=====			
JUSTICE OF THE		22/	22	Total Registration			
SUPREME COURT		100.0		And Turnout			
-----				-----			
RETAIN	YES	0	0.0	Registration		35170	
JUSTICE QUINCE	NO	0	0.0	Turnout		25169	71.6
=====				=====			
FIRST DISTRICT		22/	22				
COURT OF APPEAL		100.0					
-----				-----			
RETAIN	YES	0	0.0				
JUDGE BROWNING	NO	0	0.0				
=====				=====			
FIRST DISTRICT		22/	22				
COURT OF APPEAL		100.0					
-----				-----			
RETAIN	YES	0	0.0				
JUDGE ERVIN	NO	0	0.0				
=====				=====			

CERTIFICATE OF COUNTY CANVASSING BOARD RECOUNT

STATE OF FLORIDA

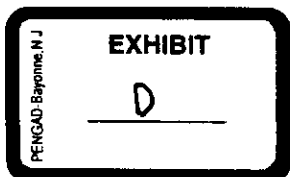
Nassau County

We, the undersigned, HONORABLE ROBERT E. WILLIAMS, County Judge,
HONORABLE SHIRLEY N. KING, Supervisor of Elections, and
HONORABLE DAVID HOWARD, Chairman of the Board of County
Commissioners, constituting the Board of County Canvassers in and for said
County, do hereby certify that we met on the 8TH day of November,
A.D., 2000, and proceeded publicly to canvass the votes given for the several
offices and persons herein specified at the **General Election** held on the 7th day
of November, A.D., 2000 as shown by the returns on file in the office of the
Supervisor of Elections. We do hereby certify from said returns as follows:

For President of the United States, the whole number of votes cast was
23,581 of which number

George W. Bush and Dick Cheney (REP) received	<u>16,280</u>	votes
Al Gore and Joe Lieberman (DEM) received	<u>6,879</u>	votes
Harry Browne and Art Olivier (LIB) received	<u>62</u>	votes
Ralph Nader and Winona LaDuke (GRE) received	<u>253</u>	votes
James Harris and Margaret Trowe (SWP) received	<u>0</u>	votes
John Hagelin and Nat Goldhaber (LAW) received	<u>7</u>	votes
Pat Buchanan and Ezola Foster (REF) received	<u>90</u>	votes
David McReynolds and Mary Cal Hollis (SPF) received	<u>4</u>	votes
Howard Phillips and J. Curtis Frazier (CPF) received	<u>3</u>	votes
Monica Moorehead and Gloria La Riva (WWP) received	<u>3</u>	votes
May Chote and Miriam E. Lancaster (WRI) received	<u>0</u>	votes
Ken. C. McCarthy and Frank Beifus (WRI) received	<u>0</u>	votes

Seal of the Circuit Court of the State of Florida
DOCUMENT



For _____
the whole number of votes cast was _____ of which number

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

For _____
the whole number of votes cast was _____ of which number

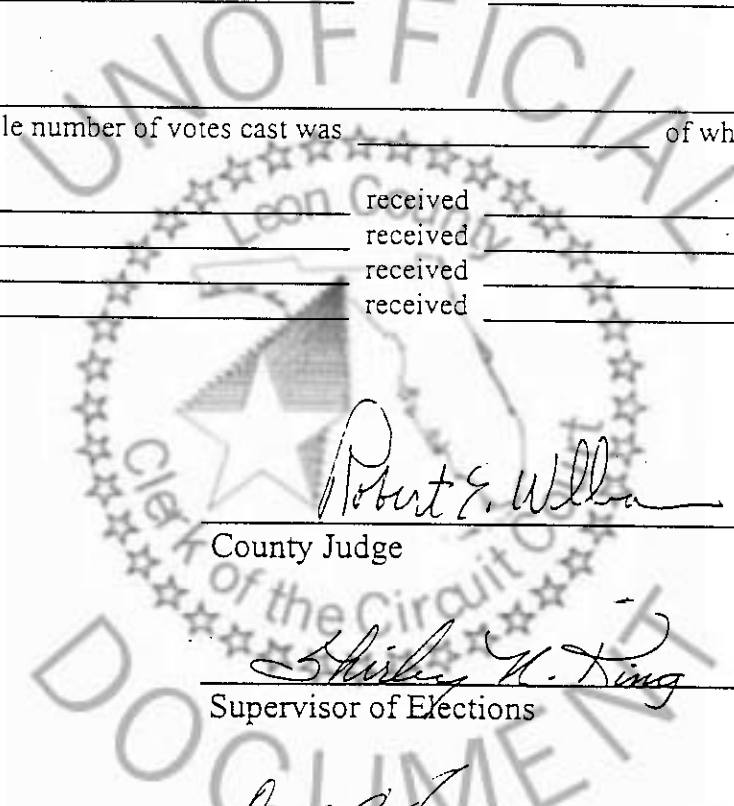
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

For _____
the whole number of votes cast was _____ of which number

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes

For _____
the whole number of votes cast was _____ of which number

_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes
_____	received	_____	votes



Robert E. Wilkin

County Judge

Shirley M. King

Supervisor of Elections

David A. ...

Chairman, Board of County Commissioners

Total ballots cast in Nassau County was 25,387 for a 72.2 percent turnout.

CERTIFICATE OF COUNTY CANVASSING BOARD

STATE OF FLORIDA

Nassau County

We, the undersigned, HONORABLE ROBERT E. WILLIAMS, County Judge,
HONORABLE SHIRLEY N. KING, Supervisor of Elections, and
HONORABLE MARIANNE P. MARSHALL, Chairman of the Board of County
Commissioners, constituting the Board of County Canvassers in and for said
County, do hereby certify that we met on the 24TH day of November,
A.D., 2000, and proceeded publicly to canvass the votes given for the several
offices and persons herein specified at the General Election held on the 7th day
of November, A.D., 2000 as shown by the returns on file in the office of the
Supervisor of Elections. We do hereby certify from said returns as follows:

For President of the United States, the whole number of votes cast was
23,782 of which number

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Harry Browne and Art Olivier (LIB) received	<u>63</u>	votes
Ralph Nader and Winona LaDuke (GRE) received	<u>255</u>	votes
James Harris and Margaret Trowe (SWP) received	<u>0</u>	votes
John Hagelin and Nat Goldhaber (LAW) received	<u>2</u>	votes
Fat Buchanan and Ezola Foster (REF) received	<u>50</u>	votes
David McReynolds and Mary Cal Hollis (SPF) received	<u>4</u>	votes
Howard Phillips and J. Curtis Frazier (CPF) received	<u>3</u>	votes
Monica Moorehead and Gloria La Riva (WWP) received	<u>3</u>	votes
May Chote and Miriam E. Lancaster (WRI) received	<u>0</u>	votes
Ken. C. McCarthy and Frank Beifus (WRI) received	<u>0</u>	votes

Seal of the Circuit Court of the State of Florida
COUNTY OF NASSAU
DOCUMENT



For _____
the whole number of votes cast was _____ of which number _____

_____	received _____	votes
_____	received _____	votes
_____	received _____	votes
_____	received _____	votes

For _____
the whole number of votes cast was _____ of which number _____

_____	received _____	votes
_____	received _____	votes
_____	received _____	votes
_____	received _____	votes

For _____
the whole number of votes cast was _____ of which number _____

_____	received _____	votes
_____	received _____	votes
_____	received _____	votes
_____	received _____	votes

Robert E. Williams
County Judge

Shirley M. King
Supervisor of Elections

Hannie Marshall
Chairman, Board of County Commissioners

Total ballots cast in Nassau County was 25,387 for a 72.2 percent turnout.

OFFICIAL AMENDED CERTIFICATE OF THE STATE
ELECTIONS CANVASSING COMMISSION OF THE
FEDERAL GENERAL ELECTION HELD ON THE
SEVENTH DAY OF NOVEMBER, A. D., 2000,
INCLUDING OVERSEAS ABSENTEE BALLOTS

We, KATHERINE HARRIS, Secretary of State, BOB CRAWFORD, Commissioner of Agriculture, and L. CLAYTON ROBERTS, Director, Division of Elections, constituting the State Elections Canvassing Commission, hereby certify the federal election returns of the general election held in the State of Florida on the Seventh day of November, A.D., 2000, and the Absentee Ballots counted pursuant to Division of Elections Rule 1S-2.013, as shown by the returns of said general election on file in the office of the Secretary of State from all the counties in Florida and herewith give below the results of said canvass:

.*This Certificate is executed by us in accordance with the provisions and mandates of the Supreme Court of Florida, by orders dated November 17 and November 21, 2000, by which we are bound, and which we will follow. Attached is Exhibit A, Supplemental Certificate in draft form, that we would have certified on November 18, 2000, had the Supreme Court of Florida not entered a stay order against us doing so. The totals of Exhibit A and Exhibit B, respectively, the latter of which contains the certified results of the 67 county canvassing boards submitted on November 14, 2000, and certified by us on November 15, would have constituted our final Certificate.

For President of the United States, the whole number of votes cast was 5,963,110 of which number

George W. Bush and Dick Cheney (REP)	received	<u>2,912,790</u>	votes
Al Gore and Joe Lieberman (DEM)	received	<u>2,912,253</u>	votes
Harry Browne and Art Olivier (LIB)	received	<u>16,415</u>	votes
Ralph Nader and Winona LaDuke (GRE)	received	<u>97,488</u>	votes
James Harris and Margaret Trowe (SWP)	received	<u>562</u>	votes
John Hagelin and Nat Goldhaber (LAW)	received	<u>2,281</u>	votes
Pat Buchanan and Ezola Foster (REF)	received	<u>17,484</u>	votes
David McReynolds and Mary Cal Hollis (SPF)	received	<u>622</u>	votes
Howard Phillips and J. Curtis Frazier (CPF)	received	<u>1,371</u>	votes
Monica Moorehead and Gloria La Riva (WWP)	received	<u>1,804</u>	votes
May Chote and Miriam E. Lancaster (WRI)	received	<u>34</u>	votes
Ken. C. McCarthy and Frank Beifus (WRI)	received	<u>6</u>	votes

EXHIBIT


F


For Representative in Congress, Twenty-Third Congressional District, the whole number of votes cast was 116,813 of which number

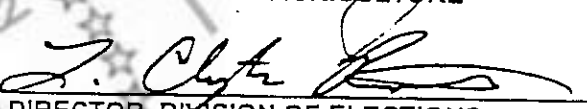
Bill Lambert (REP)	received	<u>27,630</u>	votes
Alcee L. Hastings (DEM)	received	<u>89,179</u>	votes
Frances L. Faulk (WRI)	received	<u>4</u>	votes
Charles Laurie (WRI)	received	<u>0</u>	votes

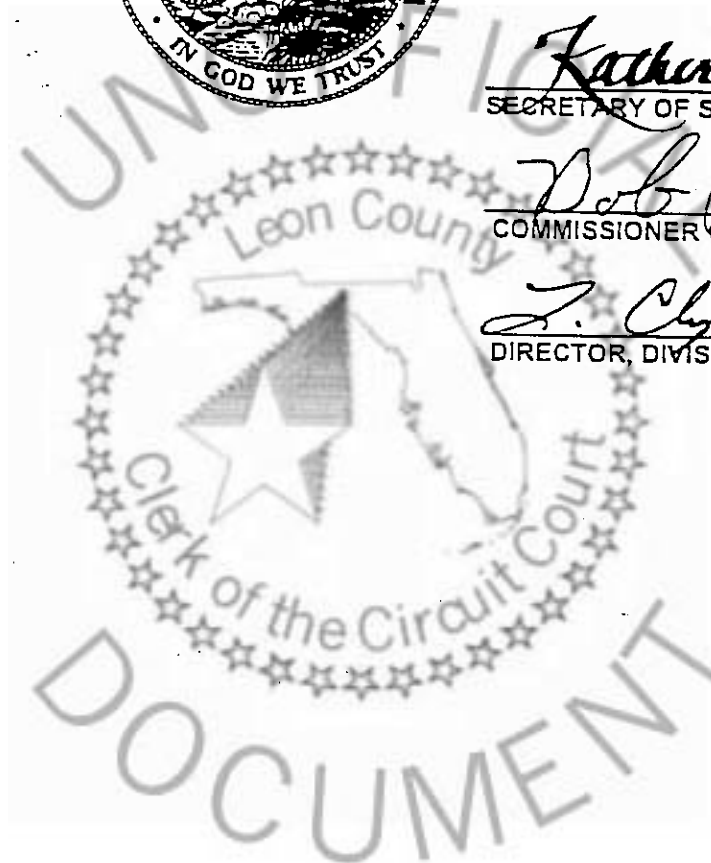


IN TESTIMONY WHEREOF, we have hereunto set
our hands and official signatures this
Twenty-Sixth day of November, A. D., 2000


Katherine Harris
SECRETARY OF STATE


Bob Peenford
COMMISSIONER OF AGRICULTURE


J. Clyde Ross
DIRECTOR, DIVISION OF ELECTIONS



And, We, KATHERINE HARRIS, Secretary of State, BOB CRAWFORD, Commissioner of Agriculture, and L. CLAYTON ROBERTS, Director, Division of Elections, constituting said Canvassing Board, do hereby certify that -

GEORGE W. BUSH and DICK CHENEY were elected President and Vice President of the United States;

BILL NELSON was elected United States Senator;

JOE SCARBOROUGH was elected Representative in Congress, First Congressional District;

ALLEN BOYD was elected Representative in Congress, Second Congressional District;

CORRINE BROWN was elected Representative in Congress, Third Congressional District;

ANDER CRENSHAW was elected Representative in Congress, Fourth Congressional District;

KAREN L. THURMAN was elected Representative in Congress, Fifth Congressional District;

CLIFFORD (CLIFF) B. STEARNS was elected Representative in Congress, Sixth Congressional District;

JOHN L. MICA was elected Representative in Congress, Seventh Congressional District;

RIC KELLER was elected Representative in Congress, Eighth Congressional District;

MICHAEL BILIRAKIS was elected Representative in Congress, Ninth Congressional District;

C. W. BILL YOUNG was elected Representative in Congress, Tenth Congressional District;

JIM DAVIS was elected Representative in Congress, Eleventh Congressional District;

ADAM H. PUTNAM was elected Representative in Congress, Twelfth Congressional District;

DAN MILLER was elected Representative in Congress, Thirteenth Congressional District;

PORTER GOSS was elected Representative in Congress, Fourteenth Congressional District;

DAVE WELDON was elected Representative in Congress, Fifteenth Congressional District;

MARK FOLEY was elected Representative in Congress, Sixteenth Congressional District;

CARRIE P. MEEK was elected Representative in Congress, Seventeenth Congressional District;

ILEANA ROS-LEHTINEN was elected Representative in Congress, Eighteenth Congressional District;

ROBERT WEXLER was elected Representative in Congress, Nineteenth Congressional District;

PETER DEUTSCH was elected Representative in Congress, Twentieth Congressional District;

LINCOLN DIAZ-BALART was elected Representative in Congress, Twenty-First Congressional District;

CLAY SHAW was elected Representative in Congress, Twenty-Second Congressional District;

ALCEE L. HASTINGS was elected Representative in Congress, Twenty-Third Congressional District;



IN TESTIMONY WHEREOF, we have hereunto
set our hands and official signatures this
Twenty-Sixth day of November, A. D., 2000

Katherine Harris

SECRETARY OF STATE

Bob Cienfuegos

COMMISSIONER OF AGRICULTURE

Z. Clayton

DIRECTOR, DIVISION OF ELECTIONS

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION**

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for Vice President of the United States,

Plaintiffs,

v.

CASE NO.: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, and SECRETARY
OF AGRICULTURE BOB CRAWFORD, SECRETARY
OF STATE KATHERINE HARRIS AND L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF
ELECTIONS, individually and as members of and as
THE FLORIDA ELECTIONS
CANVASSING COMMISSION,

and

THE MIAMI-DADE COUNTY CANVASSING
BOARD, LAWRENCE D. KING, MYRIAM
LEHR and DAVID C. LEAHY as
members of and as THE MIAMI-DADE COUNTY
CANVASSING BOARD, and DAVID C. LEAHY,
individually and as Supervisor of Elections,

and

THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING,
AND DAVID HOWARD (or, in the alternative,
MARIANNE P. MARSHALL), as
members of and as the NASSAU COUNTY
CANVASSING BOARD, and SHIRLEY N. KING,
individually and as Supervisor of Elections,

EXHIBIT G

and

THE PALM BEACH COUNTY CANVASSING BOARD,
THERESA LEPORE, CHARLES E. BURTON
AND CAROL ROBERTS, as members
of and as the PALM BEACH COUNTY CANVASSING BOARD,
and THERESA LEPORE, individually and as Supervisor
of Elections,

and

GEORGE W. BUSH, Nominee of
the Republican Party of the United States
for President of the United States and
RICHARD CHENEY, Nominee of the
Republican Party of the United States for
Vice President of the United States,

Defendants.



Affidavit of John Joseph Cascone

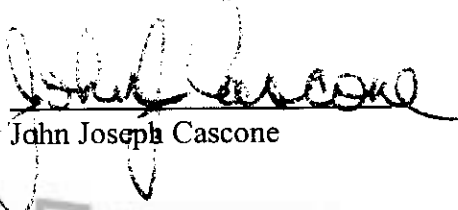
I, John Joseph Cascone, state under oath as follows:

1. I am an attorney licensed to practice in the State of Florida, and a resident of Fernandina Beach, Nassau County, Florida.
2. I represented the Florida Democratic Party at a meeting of the Nassau County Canvassing Board (the "Board") on November 24, 2000.
3. Oral notice of the November 24 meeting was provided to me at approximately 2:00 p.m. on Wednesday, November 22 and the meeting commenced at approximately 8:30 a.m. on Friday, November 24.
4. No court reporter attended the November 24 meeting and to the best of my knowledge and information, no transcript of the meeting has ever been produced.
5. To my knowledge, no one present at the meeting took notes on behalf of the Board, and, to date, the Board has not produced any official minutes of the November 24 meeting.
6. Because of the lack of appropriate notice, I objected to the meeting being held.
7. County Commissioner David Howard did not attend the November 24 meeting.
8. The other members of the Nassau County Canvassing Board, Shirley King (Supervisor of Elections) and Judge Robert E. Williams convened the meeting with Commissioner Marianne Marshall as the replacement for David Howard.
9. At the meeting, I objected to the selection of Marianne Marshall as a replacement for David Howard on the grounds that Marianne Marshall was a candidate for the County Commission with opposition in the November 7 general election, and therefore was unqualified to serve.
10. My objection was noted, but not acted upon by the Board.
11. Following the foregoing, the two Board members and Ms. Marshall considered the issue of whether to certify to the Secretary of State the election results from November 7 (election night) or those obtained in the statutorily mandated recount on November 8.
12. Board Member and Supervisor of Elections Shirley King reported that Ed Kast of the Division of Elections had advised her that the Board could choose

whether to certify the November 7 or the November 8 results.

13. I objected to the consideration of certifying the November 7 results because (i) no party, candidate or elector had protested the results from the statutorily mandated recount on November 8 and (ii) Florida law requires the results of the statutorily mandated recount to be certified if they are different from the November 7 election night returns.
14. The two Board members and Ms. Marshall voted 3 - 0 to certify the November 7 election night returns to the Secretary of State.
15. I filed the Protest to Amended Certification or Other Alternative Actions by the Nassau County Canvassing Board which is attached hereto as Exhibit A.

FURTHER, your Affiant sayeth not.


John Joseph Cascone

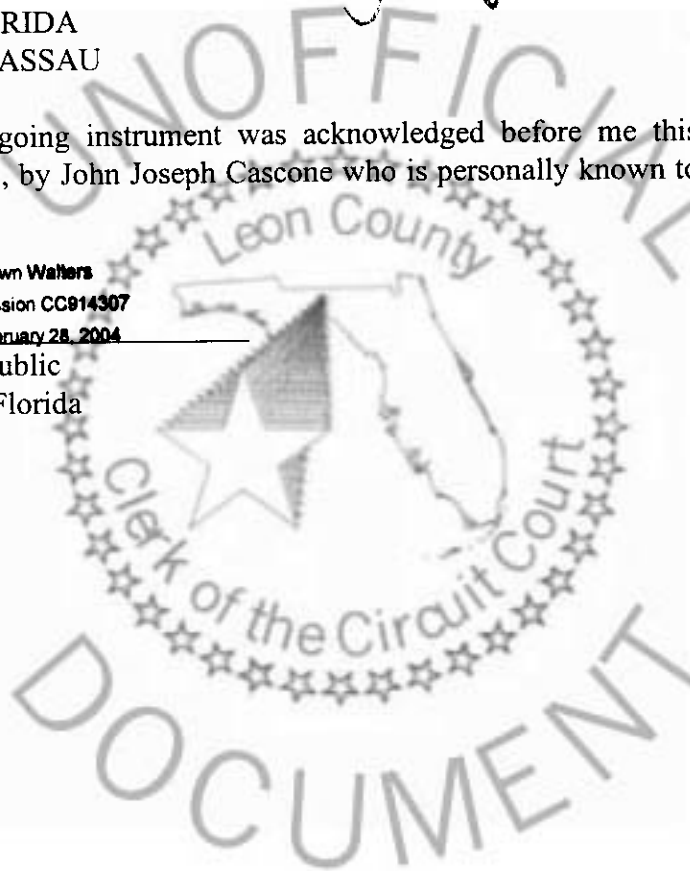
STATE OF FLORIDA
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 28th day of November, 2000, by John Joseph Cascone who is personally known to me and who did take an oath.



Shirley Strawn Walters
My Commission CC914307
Expires February 28, 2004

Notary Public
State of Florida



**ORDER DETERMINING MATERIAL FACTS
AND GOVERNING LAW AS TO COUNT III (NASSAU COUNTY)**

This cause comes before the Court upon the Motion of Plaintiffs to Resolve Factual and Legal Issues of Count III. Section 102.168(8), Florida Statutes (2000) and Florida Rules of Civil Procedures 1.100, 1.200, and 1.510(d) grant the court authority to partially determine factual and legal issues.

After consideration of the motion and memoranda, the responses, argument of counsel, and the applicable law, the Court determines:

Facts Without Substantial Controversy

1. On November 8, 2000 the Nassau County Canvassing Board conducted a machine recount of ballots as mandated by section 102.141(4), Florida Statutes (2000).
2. In the election for President and Vice President of the United States in Nassau County, that November 8 machine recount produced returns of 6,879 votes for Al Gore and Joe Lieberman and 16,280 votes for George Bush and Richard Cheney.
3. On November 8, 2000 the Nassau County Canvassing Board certified to the Department of State the returns obtained in the statutorily mandated machine recount.
4. On November 24, 2000 the Nassau County Canvassing Board met with Marianne Marshall serving as a substitute Board member in place of David Howard.

5. Marianne Marshall was a candidate on the November 7, 2000 ballot in a contested race for County Commissioner, District 5.
6. At the November 24th meeting, the Nassau County Canvassing Board determined to submit an amended certification of results to the Department of State reporting the results of the November 7 initial election night count instead of the results of the November 8 statutorily mandated machine recount.

Conclusions of Law

1. The Nassau County Canvassing Board's November 24, 2000 Amended Certificate accepts illegal votes.
2. Section 102.141(4) Florida Statutes (2000) requires a canvassing board to certify to the Secretary of State the results obtained in a statutorily mandated recount, when the results of that recount are inconsistent with the initial election night returns.
3. The Nassau County Canvassing Board violated Section 102.141(4) by submitting an amended certification to the Secretary of State on November 24, 2000 which certification reflected the November 7 initial election night returns rather than the November 8 tabulation resulting from the statutorily mandated recount. Such action by the Board constitutes misconduct sufficient to change or place in doubt the results of the election, pursuant to Section 102.141(4) Florida Statutes (2000).
4. The Secretary of State and the Elections Canvassing Commission improperly relied on the November 24 certification filed by the Nassau County Canvassing Board, which included illegal votes.

5. The Secretary of State and the Elections Canvassing Commission improperly relied on the November 24 certification filed by the Nassau County Canvassing Board, which resulted in the failure to include legal votes.
6. The true and accurate number of ballots cast that should be included in the certified results of Florida's Presidential election is 6,879 votes for Al Gore and Joe Lieberman and 16,280 votes for George Bush and Richard Cheney.

DONE AND ORDERED this ____ day of November, 2000.

Circuit Judge, Second Judicial Circuit
State of Florida



December 2, 2000

Prehearing Brief on Issues to be Determined

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

KATHERINE, HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

FILED
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CLERK OF THE CIRCUIT COURT
LEON COUNTY, FLORIDA

CASE NO.: 00-2808

PREHEARING BRIEF ON ISSUES TO BE DETERMINED

Plaintiffs seek nothing more nor less than to ensure that this matter is resolved and Florida's electors are in place before the December 12 deadline set by Federal statute. Toward that end, Plaintiffs have asked this Court, and continue to ask this Court, to begin counting – or to appoint its designees to begin counting – the disputed ballots in Palm Beach and Miami-Dade Counties as quickly as possible. Plaintiffs do not seek to shortchange this Court's consideration of any questions of fact and law that must be determined before the issues raised in this contest action are finally resolved. Rather, with an eye on the tight time period and significance of ensuring that any remedy provided is timely, Plaintiffs seek to ensure that the ballots will be counted and the results of that count will be ready for this Court's consideration as it resolves this contest.

Unfortunately, Defendants have opposed every effort to resolve this matter in a timely and fair manner. Continuing their strategy to run out the clock, Defendants opposed Plaintiffs'

Motion to Compel Counting of Votes in a hearing before this Court on November 28. The arguments they made during that hearing, however, betrayed four fundamental misconceptions that fatally undermine their theory of the case. Relying on these misconceptions, Defendants have argued that the threshold issues require time-consuming evidentiary hearings before this Court can proceed with an immediate count of the disputed ballots.

- First, Defendants mistakenly assert that a manual count is the *remedy* in this proceeding, when in fact, the count is indispensable *evidence* going to the merits of Plaintiffs' claims.
- Second, they argue that the Court must count *all* ballots if it counts any ballots, when in fact a contest action under Section 102.168, Fla. Stat. requires an accounting of only those votes specifically contested by the plaintiffs.
- Third, Defendants argue that the Court should review decisions made by the defendant county canvassing boards under an abuse of discretion standard, when in fact a Section 102.168 contest action is an original proceeding in which the court must look at the evidence – the ballots – for itself, not merely review a factual determination by an administrative body.
- Fourth, Defendants argue that the standard for determining the intent of the voter is unclear, when in fact it is well-established by the decisions of Florida's Supreme Court.

These assertions inevitably threaten to stall these proceedings. Whether these assertions are clearly wrong (as we contend) or clearly right (as Defendants contend), this Court has the authority, indeed the obligation, to order the counting of disputed ballots without further delay. It is critical that the resolution of any legal or factual assertion by Defendants not delay the

counting of ballots; if the counting is delayed, it may simply not be possible to complete the count in the time available once it starts.

SUMMARY OF ARGUMENT

This case only involves two questions: Were “legal votes rejected,” and if so, are they in number “sufficient to change or place in doubt the results of the election.” Section 102.168(3)(c), Fla. Stat. (2000). Plaintiffs ask this Court to begin counting the disputed ballots as soon as possible in order to determine whether or not these two statutory requirements are satisfied. Defendants counter that this Court must hold time-consuming evidentiary hearings to determine four issues *before* ordering the disputed ballots to be counted. None of these issues requires an advance evidentiary hearing. Given the need to complete all proceedings in advance of the December 12 deadline, if the hearings are held as Defendants ask, the vote count is unlikely to be available in time.

The Court does not need to hear evidence concerning whether Plaintiffs are entitled to relief before commencing the count. The ballots are the witnesses in this case. The Court’s review of ballots is an indispensable part of our evidentiary presentation. It is “necessary to ensure that each allegation in the complaint is investigated, examined or checked.” Section 102.168(8).

The Court does not need to hear evidence about which votes should be counted before commencing the count. There is no doubt that the disputed ballots identified in Plaintiffs’ Complaint and Emergency Motion to Commence Counting of Votes are contested. Whether or not additional ballots are ultimately counted – and we do not believe any will need to be – *these* ballots must be reviewed for the Court to determine the ultimate questions in this contest action.

The Court does not need to hear evidence concerning what standard the Palm Beach Canvassing Board used to determine the intent of the voter in its manual recount. This is an original action under Florida's election contest law, not an appellate proceeding to review the Board's administrative action. The Court must make its own de novo determination whether any of the disputed ballots contains a legal vote.

The Court does not need to hear evidence concerning the standard for determining whether a particular marking on the ballot reflects the intent of the voter. The standard on that is clear under Florida law, as articulated in *Harris*.

A. A Manual Count of Contested Ballots is Necessary Evidence of Plaintiffs' Claim

As the Florida State Supreme Court made clear in its *Harris* opinion last week, there are two basic statutory causes of action under Florida law that allow a candidate to challenge election returns. See *Palm Beach County Canvassing Board v. Harris*, SC00-2346, SC00-2348 & SC00-2349 (Nov. 21, 2000) (slip op.): a protest and a contest. Each may be brought during a specific period following election, and each carries with it specific remedies.

First, in the days immediately following the election and prior to certification of the statewide results a candidate may *protest* the results of any election under Section 102.166, Florida Statutes (2000). Under Section 102.166, a candidate or political party that protests an election has the right to request a manual recount by the appropriate county canvassing board. Section 102.166(4), Fla. Stat. (2000). The Board then has the discretion whether or not to authorize a partial manual recount. If the Board does authorize a partial manual recount, and if that recount indicates an error in the vote tabulation which could affect the outcome of the

election, then the county canvassing board is obligated to undertake one of three remedies, one of which is a manual recount. Section 102.166(5), Fla. Stat. (2000).

Second, and in contrast to an administrative protest action, a *contest* action under Section 102.168, Florida Statutes, is a special statutory proceeding before the court that allows an unsuccessful candidate to challenge election results *after* they have been certified by the Elections Canvassing Commission. Section 102.168 sets forth grounds for contesting an election. Those grounds include: “Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.” Section 102.168(3)(c), Fla. Stat. (2000). Those grounds also include “Misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board sufficient to change or place in doubt the result of the election.” Section 102.168(3)(a), Fla. Stat. (2000). The statute does not limit the remedy available in an election contest. Rather, it establishes broad authority for the courts to fashion a remedy. Section 102.168(8), Fla. Stat. (2000) (“The circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.”) In fashioning its remedy, a court should be guided by the basic purpose of the contest statute: to allow prompt and expeditious determination of the effect of any irregularities in the election. *Barber v. Moody*, 229 So.2d 284 (Fla. 1969).

In view of this dichotomous statutory structure, Defendants mischaracterize the relief that Plaintiffs seek here. At the November 28 hearing, counsel to Governor Bush accused the Plaintiffs of “trying to put the cart before the horse. It’s asking Your Honor to begin to institute

a very onerous and costly *remedy* before you decided anybody violated anything.”¹ Trans. at 41. But an immediate count of disputed votes is not a “remedy” under the contest law. Indeed, it would be premature to talk of a remedy before the votes are counted. Only once those results are available will the Court be able to determine whether Plaintiffs are entitled to the relief they seek – amendment of the certified election results to reflect legal votes that were counted in the disputed ballots but unlawfully rejected in the certification by the Elections Canvassing Commission. After all, until the disputed votes are counted, the Court cannot proceed to a final judgment determining the ultimate outcome of the issues before it. Precisely for that reason, in *Beckstrom v. Volusia County Canvassing Board*, 707 So.2d 720 (Fla. 1998), the Florida Supreme Court validated the procedure by which the trial court ordered a manual recount of over 8,000 disputed ballots, then proceeded to final hearing and final judgment to determine the election results.

Plaintiffs’ complaint sets forth credible and sufficient allegations that “a number of legal votes” for Al Gore and Joe Lieberman were rejected in Palm Beach and Miami-Dade Counties “sufficient to change or place in doubt the result of the election.” Section 102.168(3)(c). See Plaintiffs’ Complaint to Contest Election at ¶¶ 29-35, 37-39, 59-88. Clearly, the record establishes that sufficient contested votes were rejected to “place in doubt” the result of the election. The question of the ultimate outcome cannot be answered until the ballots are inspected. The ballots themselves are the best evidence – indeed the only evidence – available on both of these questions. See *Milnor v. Smith*, 107 Fla. 134, 144 So. 333, 140 (Fla. 1932) (“where the returns and certificates of the election inspectors have been duly challenged . . . the

¹ In case the Court missed the point, counsel again complained that his “client is entitled to a hearing before Mr. Boies’ client [Plaintiffs] gets relief.” Trans. at 64.

ballots themselves then become the best evidence of how the electors voted, and such ballots may be examined by the Court as original evidence . . .”). Plaintiffs are asking this Court to at this point to “fashion such orders as he . . . deems necessary to ensure that each allegation in the complaint is investigated, examined or checked.” Section 102.168(8). We respectfully submit that an immediate order to commence counting the ballots is the only way to accomplish that goal. The Court-ordered review of the ballots is not a remedy that becomes available only upon entry of final judgment. Rather, it is both a pre-judgment order under *Beckstrom* and also a part of the evidentiary hearing on Plaintiffs’ claim.² Counsel for Governor Bush has not identified any prejudice that his client would suffer as a result of a Court-ordered count.

Defendants rely on *Broward County Canvassing Bd. v. Hogan*, 607 So.2d 508 (Fla. Dist. Ct. App. 4th), for their proposition that a court-ordered manual recount is appropriate only if the canvassing board has abused its discretion. The facts of *Hogan*, however, are inapposite to this contest action. In *Hogan*, the canvassing board exercised its discretion not to conduct a preliminary partial recount under Section 102.166(4), which states that, upon request by a candidate or political party, the “county canvassing board may, but is not obligated to, grant the request.” Section 102.166(4)(c), Fla. Stat. (1991) (emphasis added). *Hogan*, at 509. For that reason, the Board in *Hogan* never reached its mandatory obligation to conduct a full manual recount (which arises if the sample recount resulted in a sufficient number of additional or changed votes.) Compare Section 102.166(5)(c), Fla. Stat. (1991) (“If the [preliminary partial] manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall. . . [m]anually count all ballots.”) In contrast, the

² In a normal proceeding, the parties would produce and inspect evidence such as the ballots. However, because of the unique value and public significance of election ballots, that procedure is unavailable in this instance. See 101.572, Fla. Stat. (2000) (“no persons other than the supervisor or the county canvassing board shall handle any official ballot or ballot card.”) Only the Court is empowered at this stage to handle the evidence.

Canvassing Boards of both Miami-Dade and Palm Beach Counties did exercise their discretion to order partial manual recounts which “showed ‘an error in the vote tabulation which could affect the outcome of the election[,]’ thus triggering the Canvassing Board[s]’ mandatory obligation to recount all of the ballots in the county.” *Miami-Dade County Democratic Party v. Miami-Dade County Canvassing Board*, Case No. 3D00-3318 (3rd D.C.A., Nov. 22, 2000).³ Indeed, both Boards made an express decision to conduct a full manual count.

In short, there is no reason why this Court must hold an evidentiary hearing to determine Plaintiffs’ right to have the ballots counted before the Court orders such a count to commence. The question does not require evidence.

B. In a Contest Action, the Court Need Only Count Those Ballots that Have Been Contested

Defendants characterization of the law with respect to the scope of a contest action is premised upon a second misconception. At the November 28 hearing, Counsel for Governor Bush and Secretary of State Harris both advised the Court that if there is any recount to be done, it has to include “all of the votes.” See Trans. at 46, 55. This is wrong. This is not a recount. This is a contest related to particular ballots. Nothing in the contest statute requires or permits ballots which are uncontested to be subject to review and investigation, and the statute certainly does not *require* every ballot cast in an election to be reviewed because a few have been challenged. The statute itself confirms the fact that judicial examination is confined to the allegations of the complaint, since the Court’s duty and discretion are conceived to ensure that

³ This Court clearly has the authority to require a manual count of the contested ballots if the complaint alleges specific grounds under the statute. See Section 102.168(8); *Farmer v. Carson*, 110 Fla. 245, 148 So. 557 (Fla. 1933) (“if a legal ground of contest is duly alleged, the court may proceed under the [contest] statute and may, when appropriate, examine the contents of the ballot boxes that were cast in the election . . .”); *State v. Peacock*, 125 Fla. 810, 170 So. 309 (1936) (recount conducted under the “Order of this Court”); *State v. Latham*, 125 Fla. 788, 170 So. 472 (1936); *Hornsby v. Hilliard*, 189 So. 2d 361 (Fla. DCA 1966).

“each allegation in the complaint is investigated, examined or checked . . .” Section 102.168(8), Fla. Stat. (2000).

The fallacy of counting all ballots cast in an election because some are contested is apparent if you apply the reasoning to a different but functionally identical situation. If the claim was that a box of ballots found at a polling place a week after the election were rejected legal ballots that had not been counted, the only issues would be (a) were they rejected, (b) are they legal, and (c) how many are there for each candidate. The situation is the same here. The dispute is about a discreet, specifically identified group of uncounted ballots. There is no question that they were rejected. The only questions are: (a) are they legal, and (b) how many are for each candidate. Answering those questions does not require review of any other ballots. Moreover, the statutory directive to examine and investigate “each allegation in the complaint” clearly confirm that reality. *Id.* (emphasis added.)

The suggestion that all ballots must be reviewed – whether contested or not – is nothing less than a delaying tactic. The Complaint identifies the ballots in dispute in this proceeding as: (a) approximately 3,300 ballots from Palm Beach County; and (b) approximately 10,750 ballots from Miami-Dade County. There is no dispute concerning the content of any other ballots cast in Florida on November 7 raised by the Complaint. Absent a separate contest alleging grounds for contest with respect to some other of Florida’s approximately 6,000,000 ballots, they are wholly irrelevant to determining whether the disputed ballots are legal votes which have been rejected or illegal votes which have been received.

This does not deny, as Defendants claim, the rights of other Florida voters to have their votes counted. Their votes *have been* counted, and there is no dispute before this Court with

respect to the results of that count. It would be a waste of this Court's time to count any ballots other than those under dispute.

The Court's role under Section 102.168 is to resolve disputes about accepted and rejected ballots that are contested. It is not, as Defendants would have it, to begin an original investigation of the election process and examine every ballot, contested or not contested. In the context of a protest under Section 102.166, the process prescribed by the Florida legislature is a full manual recount of all ballots cast in the particular county. Any candidate could have requested such a recount under the protest statute where they felt it was appropriate. Defendant Bush declined to exercise that right. No such right exists under Section 102.168. Rather, the post-certification process of ballot review is a limited one that allows a party to challenge the certified outcome of an election by contesting specific votes – those legal votes rejected or illegal votes received. Section 102.168(3)(c), Fla. Stat. (2000).

Beckstrom v. Volusia County Canvassing Board, 707 S. 2d 720 (Fla. 1998), is instructive. There the Court resolved an appeal of judgment in a contest action challenging the handling of absentee ballots which had been marked by staff members rather than the voters in a certain manner so that they could be read by electronic scanning machines. The Opinion offers no suggestion by the court or the parties that any ballots other than the contested absentee ballots be reviewed in the contest action. Indeed, the *Beckstrom* Court limited its review to only the absentee ballots disputed by the Plaintiff. Similarly, in *Delahunt v. Johnston*, 423 Mass. 731 (1986), the court examined 956 ballots to determine whether there was a discernible impression made by a stylus, and thereby determine whether those ballots should be counted or rejected. In *Pullen v. Mulligan*, 138 Ill. 2d. 21 (1990), the Illinois Supreme Court case quoted at length in *Harris*, the court exercised its discretion to determine how many -- and which -- ballots it would

review. The *Pullen* court likewise visually reviewed only disputed ballots, not the thousands of uncounted ballots cast, to determine the voters' intent.

In this case, fewer than 15,000 ballots are at issue. The identity of those ballots is clear on the face of Plaintiffs' complaint. There is no reason for the Court to review millions of uncontested ballots in order to resolve the issues raised in this contest.

C. In a Contest Action, the Court Should Review Ballots De Novo

Defendants third mischaracterization is their claim that an evidentiary hearing is necessary before beginning to count the ballots in order to determine the standard which the reviewer should apply to determine whether or not a particular marking is sufficient to indicate a legal vote. This is not an abuse of discretion case. The standard that the Palm Beach County Canvassing Board applied in conducting a Section 102.166 manual recount is irrelevant under Section 102.168. What matters for purposes of this action under Section 102.168 is that Plaintiffs have contested a number of ballots which they contend contain legal votes that were rejected by the Board. Since it is undisputed that the ballots contested by Plaintiffs were in fact rejected by the Board, the only question that remains here is whether those ballots contained legal votes. That question is one for judicial determination. *Nuccio v. Williams*, 97 Fla. 159, at 171-72, 120 So. 310 (Fla. 1929) (legal effect of votes where ballot shows mark by candidate's name not in strict compliance with statutory requirement is for judicial determination); *Wiggins v. State*, 106 Fla. 793, 144 So. 62 (Fla. 1932) (same).

Indeed, in *Williams*, a case closely analogous to this one, the Supreme Court of Florida treated as a matter of law the legal validity of ballots that featured various markings by voters:

. . . the inspectors should count and return the vote and ballot as cast whatever may be the name or the mark used, the legality of the vote being for judicial determination, if duly presented in appropriate proceedings. . . . Where the statutes require a vote to be cast in a certain way, as by placing an X mark to the left of or before the name of the person intended to be voted for, the statute should be substantially complied with, or the vote should not be counted among the votes that are properly cast. What is a substantial compliance with the requirements of the statute is ultimately a judicial question. Where a ballot contains an X mark after a name on the ballot when the statute requires the X mark to be placed before the name, or when there is a mark that has no semblance of an X mark before a name on a ballot, such irregular votes should be separately counted, tabulated, and returned, and the ballots should be duly preserved, subject to judicial procedure in which the courts may determine whether the vote so irregularly cast should be counted with those that were properly and regularly cast.

Id., (emphasis added, internal citation omitted).

In resolving a contest action, the court reviews the ballots themselves, not the canvassing board's assessment of the ballots:

where the returns and certificates of the election have been duly challenged, and facts have been shown in evidence or are admitted by pleadings, which impeach the reliability of such returns and certificates as evidence, because of some substantial failure on the part of the election officers to proceed according to the law in making or arriving at their returns and certificates, the ballots themselves then become the best evidence of how the electors voted, and such ballots may be examined by the court as original evidence, when necessary to verify the accuracy of the returns. *State v. Smith*, 107 Fla. 134, 144 So. 333, 336 (Fla. 1932) (emphasis added).

Decisions from other state courts confirm that ballots must be inspected on a de novo basis when a candidate contests election results and seeks a recount. See, e.g., *McIntyre v. Wick*, 558 N.W.2d 347, 357 (S.D. 1996) (in reviewing election recount, "this Court's scope of review is de novo, . . . since review of a ballot involves construing a document, a question of law which does not require the Court to weigh evidence."); *Fischer v. Stout*, 741 P.2d 217, 220 (Alaska 1987) ("we hold that our obligation under [state statute] is to review any and all questioned ballots cast in the election at issue . . ."); *Escalante v. City of Hermosa Beach*, 241 Cal. Rptr. 199, 201 (Cal. Ct. App. 1987) (applying de novo review standard to ballots unless interpretation

requires extrinsic evidence), review denied (1988); *Wright v. Gettinger*, 428 N.E.2d 1212, 1223-25 (Ind. 1981) (deciding, on de novo basis, the legal standard for counting punch card ballots).

Counsel for Governor Bush argued before this Court at the November 28 hearing that this interpretation of the law could not be correct because it would mean that “the only thing that has to happen to force the Court to count ballots is one candidate has to protest what the Canvassing Board did, and it’s a de novo hearing.” Trans. at 64. But that interpretation ignores the pleading requirements of the Florida contest law. Plaintiffs here must satisfy two threshold pleading requirements: first, they must identify specific ballots they believe contain legal votes rejected in the certified results; and second, they must establish a prima facie case that those votes are sufficient in number to “change or place in doubt the outcome of the election.” Section 102.168(3)(c). These are appropriately high threshold requirements, and the Florida Legislature has decided that a Plaintiff who can meet them may bring a contest action.⁴

D. An Objective Intent Standard Must Be Applied in Determining a Voter’s Intent

The Florida Supreme Court in *Harris* determined the standard that this Court must apply in making its determination of the ballots. The law of Florida is that punchcard votes must be counted according to an objective standard that looks to the intent of each voter as expressed in the marking of the ballot. Only last week, the Florida Supreme Court stated clearly:

⁴ Texas law is illustrative on this point. In an election contest raising a challenge to write-in statements on ballots, the appellate court ruled that, as a matter of law, certain write-in names should count for a candidate “because the voter’s intent to vote for him is clearly ascertainable.” *Guerra v. Garza*, 865 S.W.2d 573, 577-78 (Tex. Ct. App. 1993). The court remanded the case and instructed the trial court to apply this standard in reviewing the ballots. See *id.* at 579. Nothing in the court’s decision suggests that local election officials’ analysis of the ballots would be accorded any deference. In another case applying the Texas contest statute – which is substantially similar to Florida’s contest provision – the Texas Court of Appeals held that where a contestant shows that legal votes were not counted, the trial court must “ascertain the true outcome of the election.” *Tiller v. Martinez*, 974 S.W.2d 769, 772 (Tex. Ct. App. 1998). These decisions underscore that the determination of a voter’s intent based on ballot markings is an issue of law to be judged de novo by the courts in an election contest.

[A]n accurate vote count is one of the essential foundations of our democracy. The words of the Supreme Court of Illinois are particularly apt in this case:

The purpose of our election laws is to obtain a correct expression of the intent of the voters. Our courts have repeatedly held that, where the intention of the voter can be ascertained with reasonable certainty from his ballot, that intention will be given effect even though the ballot is not strictly in conformity with the law The legislature authorized the use of electronic tabulating equipment to expedite the tabulating process and to eliminate the possibility of human error in the counting process, not to create a technical obstruction which defeats the rights of qualified voters. This court should not, under the appearance of enforcing the election laws, defeat the very object which those laws are intended to achieve. To invalidate a ballot which clearly reflects the voter's intent, simply because a machine cannot read it, would subordinate substance to form and promote the means at the expense of the end.

The voters here did everything which the Election Code requires when they punched the appropriate chad with the stylus. These voters should not be disenfranchised where their intent may be ascertained with reasonable certainty, simply because the chad they punched did not completely dislodge from the ballot. Such a failure may be attributable to the fault of the election authorities, for failing to provide properly perforated paper, or it may be the result of the voter's disability or inadvertence. Whatever the reason, where the intention of the voter can be fairly and satisfactorily ascertained, that intention should be given effect.

Palm Beach County Canvassing Board v. Katherine Harris, 2000 WL 1725501 (Fla. Nov. 21, 2000), quoting *Pullen v. Milligan*, 561 N.E. 2d 585, 611 (Ill. 1990) (citations omitted).

This is not new. For more than 80 years the Florida Supreme Court has adhered to this very standard for paper ballots. See, e.g., *Darby v. State*, 73 Fla. 922, 924, 75 So. 411, 413 (Fla. 1917). The purpose of the standard is expressed in the longstanding doctrine that the voters of this state are "possessed of the ultimate interest and it is they to whom we must give primary consideration." *Boardman v. Esteva*, 323 So.2d 259, 263 (Fla. 1975).

Florida's election code itself makes the objective intent standard clear. Section 101.5614(5) provides: "No vote shall be declared invalid or void if there is a clear indication of the intent of the voter" Subsection (6) of the same section states the corollary: " . . . if it is impossible to determine the elector's choice, the elector's ballot shall not be counted for that office" This provision is most telling. Only the impossibility of determining the voter's choice justifies rejecting a ballot. Likewise, the manual recount statute applicable to county canvassing boards under a Section 102.166 protest action provides that counting teams are to manually examine punchcard ballots "to determine a voter's intent." §102.166(7)(b), Fla. Stat. (2000).

Following this standard, Circuit Judge Jorge Labarga relied on the decision by the Massachusetts Supreme Court in *Delahunt v. Johnston*, 671 N.E.2d 1241 (Mass. 1996), for assistance. In *Delahunt*, the Court instructed that "a discernible indentation made on or near a chad should be recorded as a vote for the person to whom the chad is assigned." *Id.* at 1242 (emphasis added). Judge Labarga noted that the *Delahunt* court flatly rejected the contention that voters may have started to express a preference in a candidate, made an impression on a punch card, but pulled the stylus back because they did not want to express a choice on that particular contest. As the Court noted: "The large number of ballots with discernible impressions makes such an inference unwarranted, especially in a hotly contested election." *Id.* At 1252. *Florida Democratic Party v. Palm Beach County Canvassing Board*, CL 00-11078 AB, at n.1.⁵ The "discernible impression" standard under Florida law is the same as the "discernible indentation" standard articulated in the *Delahunt* decision.

⁵ Similarly, Broward County Circuit Court Judge John Miller recognized that this was the appropriate standard. On November 17, 2000, he stated that the Broward County Canvassing Board must examine the totality of the ballot to determine the intent of the voter. He continued, "[i]f I find that the Board isn't counting the pregnant chads and all

The objective intent standard contained in Florida law is utilized throughout the United States. Federal courts and state supreme courts in Alaska, California, Indiana, South Dakota, the Virgin Islands, Massachusetts and Illinois, among others, have applied the objective intent standard to punchcard ballots. The resulting opinions require close manual inspections of ballots to determine the voters' intent. See *Stapleton v. Board of Elections*, 821 F.2d 191 (3d Cir. 1987) ("Absent an unequivocal legislative intent to the contrary, we are compelled to uphold the voter's intent to the extent it can be ascertained."); *Democratic Party of the Virgin Islands v. Board of Elections*, 649 F.Supp. 1549 (D.R.V.I. 1986) ("the intention of the elector must be paramount"); *Hickel v. Thomas*, 588 P.2d 273, 274 (Alaska 1978) (unperforated punchcard ballots marked by pen are counted because they reflect voter's intent); *Wright v. Gettinger*, 428 N.E.2d 1212, 1215 (Ind. 1981) (ballots with partially attached chads counted because they reflect voter's intent); *McCavitt v. Registrars of Voters of Brockton*, 383 Mass. 833, 836-39, 434 N.E.2d 620, 623-25 (1982).

Under this objective intent of the voter standard, the Court must, as a matter of law, count all ballots that contain a discernable indentation or other mark, at or near the ballot position for the candidate, unless other evidence on the face of the ballot clearly indicates a voter's intention not to vote for that candidate. Even absent any physical perforation of the chad, as a matter of law, a discernible indentation on the ballot constitutes objective evidence of the voter's intent to vote for the chosen candidate. This is especially true where the voter has marked no other position for the office of President. Thus, where the ballot contains an indentation, it should be interpreted as evidence of intent to vote for the chosen candidate, not intent to abstain. See *Darby v. State*, 73 Fla. 922, 75 So. 411 (Fla. 1917) (an "x" marked on the wrong side of the

this other stuff that's supposed to show the totality of the ballot and show the intent of the voter, then I will tell them to do it again." [Cite]


ballot question did not make the vote improper; "x" reflected the plain intent of the voter and must be counted). Darby is closely analogous to the present situation. See also *Duffy v. Mortensen*, 497 N.W. 2d 437, 439 (S.D. 1993) (holding that "[o]nly if it is impossible to determine the voter's intent is a part of a ballot void and not counted. We presume every marking found where a vote should be to be an intended vote unless the contrary is clear."); *Pullen v. Mulligan*, 561 N.W.2d 585, 609 (Ill. 1990) (discerning intent of the voter in instances where "the chad did not completely detach from the ballot, but the voter instead punctured a round hole in the chad, partially dislodged the chad or made a strong indentation in the chad."); Texas Elections Code §127.130(d)(3) and (4) (requiring punchcard vote to be counted if "an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote; or . . . the chad reflects by other means a clearly ascertainable intent of the voter to vote.")

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court to begin counting the contested ballots as quickly as possible.

Respectfully submitted this 1 day of ^{December}~~November~~, 2000.

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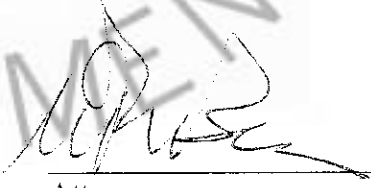
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December 2, 2000
Transcript of Hearing

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

ALBERT GORE, JR., et al.,
Plaintiffs,

CASE NO.00-2808

vs.
KATHERINE HARRIS, as Secretary
of State, STATE OF FLORIDA, et al.,

Defendants.



IN RE:

Hearing

BEFORE:

HONORABLE N. SANDERS SAULS
Circuit Court Judge

DATE:

Friday, December 1, 2000

TIME:

Commenced: 3:00 p.m.
Concluded: 4:23 p.m.

LOCATION:

Leon County Courthouse
Courtroom 3D
Tallahassee, Florida

REPORTED BY:

B. J. QUINN, RPR, CMR, CP
Certified Realtime Reporter
Notary Public in and for the
State of Florida at Large

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* * * * *



PROCEEDINGS

1
2 THE COURT: I can't hardly lift this phone. All right.
3 Everybody present? We'll call up the case of
4 Albert Gore, Jr., vs. Katherine Harris, Secretary of State,
5 et al., Defendants, Case Number 2000-2808. All of you who
6 wish to appear, have you entered your appearances with the
7 court reporter?

8 Has everyone entered their appearances? And let me
9 make sure, Mr. Clerk, are you ready to proceed? I neglected
10 to ask you.

11 THE CLERK: Yes, Your Honor.

12 THE COURT: And, madam reporter?

13 THE COURT REPORTER: Yes, sir.

14 MR. KITCHEN: Your Honor, Mr. Deeno Kitchen is entering
15 an appearance for the attorneys for Al Gore.

16 THE COURT: All right. Anyone else?

17 MR. KLAYMAN: Your Honor, subject to your order
18 yesterday, I'm appearing, Larry Klayman, as an observer with
19 Judicial Watch.

20 THE COURT: Yes, sir.

21 MR. LABASKY: Your Honor, on behalf of Broward County
22 on their motion that is going to be before you, Ron Labasky.

23 THE COURT: Now, who is on the telephone? And I'm
24 going to announce right at this time, we're not going to
25 delay any further hearings or any party to appear by

1 telephone. Everybody will be present at any future hearings.

2 I understand there are -- who are there, three attorneys?

3 MR. GREENBURG: Yes, sir, Murray Greenburg on behalf of
4 the Miami-Dade Canvassing Board. We will be in your
5 courtroom tomorrow morning, Judge.

6 THE COURT: All right, who else?

7 MR. ROJOS: Jose Rojos, Assistant County Attorney, on
8 behalf of the Broward County Canvassing Board, along with
9 Andrew Myers (phonetic), and Edward Dion, county attorney --

10 THE COURT: Mr. Labasky, who are you representing?

11 MR. LABASKY: -- I've been asked to appear by
12 Mr. Sam Born (phonetic), Your Honor.

13 THE COURT: What county?

14 MR. LABASKY: Broward.

15 THE COURT: I don't know why you got so many attorneys
16 from Broward. You got a good one up here, apparently. Who
17 else is on there?

18 MR. BERGER: Leonard Berger, all by himself in
19 Palm Beach County, appearing on behalf of the County
20 Canvassing Board, and will be there tomorrow morning.

21 THE COURT: Who are you representing?

22 MR. BERGER: Palm Beach County Canvassing Board and the
23 Supervisor of Elections, and apparently.

24 THE COURT: Who was it that -- I didn't realize that
25 our administrator, apparently, as a courtesy, had been

HEARING before JUDGE SAULS, 12/1/00

1 furnishing these, rather than these being on conference call,
2 and, of course, the taxpayers of Leon County don't have
3 endless resources. So we're not supplying any of that. Who
4 else?

5 MR. JENNINGS: Your Honor, Bill Jennings.

6 THE COURT: He represents the Intervenor, I believe?

7 THE COURT ADMINISTRATOR: And Mr. Mullins.

8 THE COURT: Who is Mr. Mullins?

9 THE COURT ADMINISTRATOR: Represents Nassau
10 County, I believe.

11 THE COURT: Well, apparently, there's been some --
12 we've been unable to connect him. He, apparently represents
13 that Canvassing Board, is my recollection.

14 THE COURT ADMINISTRATOR: Correct.

15 THE COURT: That's all we can do, if you can't get him.
16 Was there anyone else?

17 THE COURT ADMINISTRATOR: That's all.

18 THE COURT: Yes, sir, for what purpose does the
19 gentleman arise?

20 MR. VEZINA: Yes, sir, my name is Rob Vezina. I
21 represent John Thrasher, who has moved to intervene and filed
22 those papers this morning.

23 MR. GUMMEY: Your Honor, Frank Gummey, assistant
24 county attorney for the Supervisor of Elections of Volusia
25 County, Eddy Lowe, who is present and a representative,

1 Major Robert Jones of the Volusia County Sheriff's
2 Department.

3 THE COURT: All right. Apparently there are a number
4 of these appearances requested by telephone, apparently in
5 response, I have filed objections, is that correct, to
6 subpoenas for the production of ballots from the counties of
7 Broward, Pinellas, Volusia, and was there another one?

8 Let me see if I can file -- which file? We need to
9 take that matter up. Mr. Labasky, I suppose you're here
10 representing Broward with respect to those objections to the
11 subpoenas for those documents?

12 MR. LABASKY: For the ballots in particular.

13 THE COURT: Sorry that I can't see you now. They put
14 something else up in front of me, For what purpose, I don't
15 know.

16 MR. LABASKY: Related to the ballots and the subpoenas,
17 Your Honor.

18 THE COURT: All right. And let's go ahead and take
19 those objections up, and that way those folks can go ahead
20 and disengage from the telephone.

21 And if that's the case, then perhaps poor Mr. Mullins
22 can then have a space on the line where he can get through,
23 or have an objection to the subpoena for production from
24 Pinellas County, one from Volusia, one from Broward, and were
25 there any others? Apparently not.

HEARING before JUDGE SAULS, 12/1/00

1 Then I had a motion from protective order from the
2 supervisor in Broward County.

3 All right. At this time, is there -- on the objection,
4 I understand the objection, as stated in here, the Court is
5 inclined to, with respect to these, prior to hearing the
6 proponent, and the request for production, to suspend those
7 subpoenas pending further order, an order that those ballots
8 be immediately sequestered, and impounded, and with the
9 order, an injunction that there will be no access to those
10 ballots pending further order, by any person whatsoever.

11 Now, having said that, Mr. Richard, is it --

12 MR. RICHARD: That's sufficient. We see no necessity
13 for you to order those ballots shipped up here at this time.
14 We filed these motions to preserve our interest in the event
15 you reach, at some point, that you order some counting of the
16 ballots. But until and if we reach that stage, what I just
17 suggested is acceptable.

18 THE COURT: All right. Now, let me find out, then,
19 Mr. Rojos, Mr. Labasky, Mr. Berger, Mr. Gummey, was there
20 anyone else with respect to these objections? Do you have
21 any objection to the order that I just entered?

22 MR. LABASKY: No Your Honor.

23 MR. GUMMEY: No, Your Honor, for Volusia.

24 MR. ROJOS: On behalf of Broward County, no objection
25 to your order.

1 THE COURT: What says Pinellas? Pinellas is not
2 represented?

3 Let me then charge and instruct counsel for the
4 requesting parties to notify the appropriate parties in
5 Pinellas, whoever filed the objection, of the order and the
6 injunction so that it is effective, counsel, immediately from
7 the bench as of now.

8 All right. If that's the case, then, all those
9 parties, then, may be excused.

10 *(ALL PARTIES VIA SPEAKERPHONE LEFT HEARING.)*

11 THE COURT: Then the next matter we have on this
12 agenda, apparently, this was a requested pretrial conference.
13 Quite frankly I thought we spent the better part of the last
14 two or three days in scheduling and pretrial conferences, but
15 looking at Rule 1.200, I believe of the Florida Laws, and in
16 an abundance of caution, the Court necessitated the request,
17 and necessitated and switched the "may" in the rule to
18 "shall," and the Court has now, in accordance with that rule,
19 called the pretrial conference.

20 And, of course, under the rule 1.200, isn't it, yes?
21 Yeah, 1.200. The purpose, among other things, to schedule
22 and reschedule. Well, we've been doing a lot of that. Reset
23 a trial. We've done that. To coordinate the progress of the
24 action in complex litigation, we've made some attempt. Maybe
25 we can do some fine-tuning today. And then schedule an order

1 and expedite discovery, and we may need to do a few matters
2 concerning that if you still have some problems, if you need
3 to see about scheduling disclosure of expert witnesses, and
4 the furnishing or discovery of facts known and the opinions
5 held by such experts, if counsel have not already done so and
6 exchanged, you're going to have to do that prior to the
7 commencement of whatever portion of the trial we're going to
8 have tomorrow.

9 And that said, the Court, having looked at it, has
10 decided that the matters that we're going to hear tomorrow,
11 will be any motions, and only such motions that are related
12 to the trial of this case.

13 This is denominated a contest under the statute, but
14 what it, in essence, provides for is a trial, just like any
15 other civil trial, but it is on an expedited basis.

16 We will follow the Rules of Procedure to the maximum
17 extent that's feasible and possible. And the presentation of
18 rules concerning opening, presentation of evidence, and
19 closing statements, as so indicated.

20 And at this time, let me announce that I need to hear
21 from counsel and get some assistance on fashioning such
22 things as some appropriate time limits for the Opening
23 Statements, and the scope of those Opening Statements.

24 And I assume what we would have is four, basically four
25 groups. I have Plaintiffs, and then I have one -- how many

1 sets of Defendants do I have?

2 MR. DOUGLASS: Two.

3 THE COURT: Well, then I have two Intervenors.

4 THE CLERK: Please turn your television down.

5 THE COURT: Okay, and we have two Intervenors
6 represented by Mr. Myers and Mr. Madigan.

7 MR. MADIGAN: Ye sir, Your Honor.

8 THE COURT: We'll designate you as -- I guess we did
9 not do so in the intervention, and that would be, also, as
10 additional Defendants.

11 MR. GREENBURG: Your Honor, if I may, I believe there
12 are more -- this is Mr. Greenburg in Miami. I believe there
13 are more than two Defendants, Judge.

14 THE COURT: I think you're quite correct. I have,
15 also, what, three Canvassing Boards?

16 MR. GREENBURG: Yes, sir.

17 THE COURT: And I have got -- well, that is sort of a
18 separate category, to some extent. I've got three Defendant
19 Canvassing Boards, and we'll designate the other two
20 intervening parties, as additional Defendant Status
21 Intervenors, unless there's some objection to the
22 designation.

23 So, in essence, I then have, as I thought, basically,
24 four groups. And then I had -- there was one other
25 Intervenor, and that was basically -- that was a limited

1 intervention, which would remain within the group, as I'm
2 hastily -- I suppose, designating that as being with the
3 other Intervenor Defendants.

4 So that being the case, then what we will have is, I
5 suppose, a brief Opening Statements, and we'll discuss any
6 limitations that may be appropriate as to time and scope, in
7 just a minute.

8 But let me just run through my list that I just tried
9 to hurriedly jot down, if I've omitted matters we need to
10 take up, all you counsel are experienced, and I'm sure you
11 will assist me, which I will welcome.

12 We, of course, will not have, in the Openings, any
13 repetition, narration of any of the issues or the anticipated
14 evidence. That's simply not going to be permitted. If it's
15 said once, then it applies to the various parties, then I'm
16 going to deem that as being an Opening for each of those
17 parties. Unless it's expressly explained.

18 And what we're going to do is, do the same thing with
19 any anticipated evidence by the various parties. And so I
20 also would need to know at this time today, if there are
21 any -- if you'd advise me of any contentions that have been
22 abandoned.

23 Then we will need to, I suppose, develop the expected
24 order of proof for the trial. And let me say at the
25 beginning of the trial, beginning tomorrow morning, counsel

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1 will exchange, within these four groups, furnish to opposing
2 counsel, the Court and the bailiffs, your order list of your
3 witnesses, and your exhibits, and any depositions that you
4 expect to use.

5 And if any of you have any witnesses that are on call
6 for any reason, it's going to be your responsibility to
7 anticipate the time that those witnesses are to be available.

8 The bailiffs are going to have lists of witnesses, and
9 I'm not going to have a witness called, and then every time
10 wait for five minutes for somebody to go across the street or
11 even down the hall.

12 We're going to have a couple of witnesses right outside
13 each time an additional witness is necessary so that we don't
14 have -- we have minimal delay.

15 I wonder if we could discuss today also within these
16 groups, if there could be, or is it feasible to try to
17 ascertain if we can get some primary counsel designations
18 with respect to examination of witnesses, and presentation of
19 any objections and arguments.

20 And in that regard, objections that are made by one
21 party, will be deemed to have been made by all similarly
22 situated parties, unless other counsel, of course, may
23 succinctly -- and I emphasize "succinctly," add any further
24 grounds which will be considered on the same basis with
25 respect to all other parties similarly situated.

1 And, in addition, with respect to examination of
2 witnesses, other counsel will be afforded, of course, the
3 opportunity to conduct supplemental examination after the
4 initial examination Direct and Cross has been completed.

5 But that supplemental examination will be only on
6 matters that are unique to their respective clients, and will
7 be with respect to subject matter that's not already been
8 covered in prior examination. And redundant examination
9 merely for emphasis will absolutely not be permitted under
10 the time schedule that we will have to operate under.

11 And if I may harken back with respect to what is going
12 to be ordered for you to exchange on the -- I'm anticipating,
13 we're going to be able to do all this in one day. But if it
14 happens to carry over to another day, on the morning of each
15 trial, you're going to exchange your order list for the
16 order of the day, whichever party is still -- still has the
17 floor and has the case.

18 With respect to any depositions that any of you intend
19 to utilize, your list is also going to have to indicate the
20 portions of those depositions that are to be used, and any,
21 of course, any changes, or any -- that have been made, or
22 have occurred from any prior designations that you furnished
23 to each other.

24 Make a note, before we leave here, we need to discuss
25 markup of exhibits if there's some way that we can accomplish

1 prior to commencement of trial for the utilization for there
2 to be some appropriate markup of exhibits, so that we don't
3 have to take time to do that.

4 And then I would like to suggest, and it's going to
5 be -- I think my order is subject to, hopefully, some
6 refinement from counsel. But it seems to me that what we
7 have to deal in the time that we have, that we should have in
8 the trial, a presentation of evidence, by issues.

9 We can categorize, and then we'll have presentation of
10 the evidence, first, by the Plaintiff, and then by the
11 Defendants.

12 And with respect to the Defendants, the rules I've
13 already announced.

14 And we'll do that on an issue-by-issue basis. And that
15 way we can take everything with respect to that category, and
16 then we'll move to the next category.

17 And I suppose, within that category, also here on --
18 after the presentation of all the evidence, your Closing
19 Arguments with respect to that portion, you can also go ahead
20 and present that in that sequence. And then we'll do that
21 without waiting for a decision on any prior issues. And that
22 way we'll move through each of the groupings, and each of the
23 issues, and each of the categories of evidence.

24 Now, that's generally, it appears to me, how the trial
25 is to be conducted.

1 And I don't propose to hear anything else today on any
2 other matter, other than those matters.

3 Does anybody have any suggestion? Objection.

4 MR. DOUGLASS: Your Honor, Mr. Kitchen is going to be
5 involved in presenting our case, and he had some suggestions,
6 I think, that we would like to make to the Court, concerning
7 the conduct of this matter, forward.

8 THE COURT: Tell me what they are.

9 MR. KITCHEN: If Your Honor please. Judge, we have
10 tried to comport with some suggestions that would make sure
11 what we accomplish in the presentation of evidence in this
12 case.

13 THE COURT: I thought I had covered it all. Didn't I?

14 MR. KITCHEN: Well, you covered just about everything.

15 THE COURT: Well, give me what I didn't, and tell me
16 what's wrong, okay.

17 MR. KITCHEN: Well, I'll tell you a couple of things
18 that I think we should give heed to. And one is right off
19 the bat that we suggest that the Plaintiffs and the
20 cumulative Defendants get equal time as opposed to one small
21 amount of time for each party, leaving the Plaintiff vastly
22 out-timed, if you would.

23 THE COURT: Yes, sir, that's the first thing I have.
24 We need to discuss that on the Opening Statements, and
25 everything else.

1 Perhaps what we might say is, we're going to have --
2 allocate a block of time, say, three hours for the Plaintiff,
3 and three hours for the Defendants. And then maybe an hour
4 each for all of the other Defendants? I don't know. If you
5 have a suggestion in that regard, let me hush, and hear what
6 you got in mind.

7 MR. KITCHEN: I'm not so much concerned about how much
8 time each side gets, but that each side gets the equal amount
9 of time, whatever it takes for us to get it done, is,
10 obviously, the kind of time constraints that we're facing.
11 But the equality is what's significant to us.

12 THE COURT: All right. Well, what purpose does the
13 gentleman arise?

14 MR. RICHARD: If I correctly understood what you were
15 suggesting, you were going to have the main parties, whatever
16 it may be, Opening Statement, presentation of evidence,
17 Closing, make their presentations. And then if the
18 Intervenors had any, or other secondary parties, had anything
19 to add, that you expected that it would not be corroborative
20 or repetitive, and that you would make that decision at the
21 time. It seems to me that pretty well resolves the issue
22 Mr. Kitchen is concerned about.

23 THE COURT: Except given some designation so everybody
24 has got some idea, generally, how much time they got.

25 MR. RICHARD: That's fine. My only concern is, if

1 we're talking about presentation of evidence, obviously, and
2 as I understood what you suggested, you're going to take this
3 as a series of mini trials.

4 THE COURT: That's what I suggested. Now, that, may
5 not be workable. In other words, you're the lawyers here,
6 and you know your case. And what I don't want to do is foul
7 up any of your cases. You know, a Judge can do that if he
8 doesn't know the case as well as you. So I was giving a
9 suggestion and, of course, if you got any --

10 MR. RICHARD: I have no problem with that. My only
11 concern, Your Honor, is we would be opposed to an artificial
12 limitation on the time for presentation of evidence, because
13 sometimes the Defense necessitates more time than the
14 Plaintiff's case, and that's up to you to determine as the
15 evidence unrolls. You obviously have the ability to manage
16 it, if you think it's becoming redundant or irrelevant.

17 THE COURT: Well, I tell you what, I think maybe we'll
18 save a little time here this afternoon. Let's go ahead and
19 let Mr. Kitchen get through and then I'll hear the rest. Go
20 ahead as quickly as you can.

21 MR. KITCHEN: Let's talk about the basic things. One
22 is the timing being equal, as practical under the
23 circumstances. And you know when you need to change that.

24 Second -- and farbeit from me to suggest a federal
25 rule -- but we really think, in a case like this, Your Honor,

1 you should, unless there's an extreme difficulty presented,
2 limit presentation of evidence to: Direct, Cross, Redirect.
3 And not just back and forth, ad infinitum.

4 THE COURT: That will be the rule. That's a good point
5 that I neglected. That's one thing I overlooked. What we're
6 going to have is we're going to have Direct and Cross. And
7 then in this particular case, we're going to have Redirect
8 limited to the scope of Cross.

9 Now, has anybody got any objection to that? In other
10 words, you know, if you're on Direct, you could go in and
11 reopen your case. But I'm not going to permit that under
12 this time constraint. So we'll have Direct, Cross, and then
13 Redirect. But that will be limited to Cross that would be a
14 valid objection. Go ahead.

15 MR. KITCHEN: Your Honor, we'd like to also suggest to
16 you what we think would be an expeditious way to handle the
17 matters to be presented.

18 We've suggested in the Motion for Pretrial Conference
19 that we filed with you, a proposed Pretrial Order.

20 THE COURT: Which I'm not going to grant. The order --
21 I'm not going to take up motions, as I indicated.

22 The only motions that I'm going to take up are those
23 that are the usual, ordinary motions that go to the trial of
24 any case; that is, any Motions to Dismiss, or any Motions for
25 Judgment on the Pleadings.

1 We need to go ahead and get into our matters of
2 evidence, and then we can argue any and all matters related
3 to some of them. If some were only related, perhaps, to law
4 as it relates to a particular group, then sobeit.

5 But if there is any mixture, mixed questions, then
6 we'll already have the evidence, and then we'll proceed.
7 What we have to do here is to take the evidence. This is a
8 trial of contesting a statewide election.

9 And so we have to determine, with respect to the
10 evidence, and the burden would be whether or not, whatever,
11 but for, whatever it is that is claimed, the outcome of the
12 election would be different.

13 And that's what we many need to hear the evidence on
14 with respect to that.

15 MR. KITCHEN: Can I ask you a question, Your Honor.

16 THE COURT: I don't know what kind of answer you're
17 going to get, but you certainly can.

18 MR. KITCHEN: You know I'm late here, but I think I
19 understand what we're trying to do. What we are looking for,
20 the Plaintiffs, Albert Gore, Jr., and Joseph Lieberman, is
21 certification, that we won the election, and we get our
22 electors.

23 Now, the witnesses to our case is very simply the
24 ballots cast by the people of Florida. Those are the
25 witnesses.

1 Now, the first --

2 THE COURT: I don't want to truncate you, but I don't
3 want to hear -- I've heard that argument a number of times in
4 various motions.

5 But what we have here is a trial, and you have a number
6 of facets of evidence that go to whether or not, in a
7 statewide election, whether or not the evidence is sufficient
8 to show that, but for whatever it is that is claimed, that
9 the statewide election would be different.

10 And that doesn't entail just ballots, or the counting
11 of ballots. There may or may not be other evidentiary
12 matters that relate to that.

13 So, in that regard, we're not dealing with just --
14 unless I'm totally in error -- just the counting of ballots,
15 as I understand the law.

16 MR. KITCHEN: Well, sir, I guess the real question I'm
17 asking, then, is our renewed Motion to Commence the Counting,
18 our motion regarding the procedures for conducting --

19 THE COURT: You are a little late on that. I've, in
20 effect, stated on two separate occasions, every time we're
21 here, that there can be no ruling on those that would -- or
22 anything that would be dispositive of those motions until the
23 necessary evidence with respect to the necessity for the
24 counting -- for any counting, or, as I understand it, as I've
25 now been able to, over a short period of time, review it, we

1 basically would be, first, engaged in a review of all -- of
2 certain ballots, perhaps, that are being submitted by the
3 Plaintiffs in this particular action with respect to certain
4 counties, to -- it's a review to determine validity, or
5 invalidity of those ballots.

6 But in the same -- at the same time, you would be
7 simultaneously counting, I assume, those that were determined
8 to be valid, and separate those that are invalid.

9 So there's more than just that review and counting. So
10 that's the reason I'm unable to continue to take up those
11 motions.

12 MR. KITCHEN: Then you're telling us, as we start
13 tomorrow with our Opening Statements, our evidence as to
14 all -- wherever it falls in, that's when we're going to deal
15 with all of these issues?

16 THE COURT: Yes, sir.

17 MR. KITCHEN: And the procedures you've just announced,
18 what we did request as to the time and all the --

19 THE COURT: Do you have any suggestion on the
20 allocation I mean, as far as -- I understand Mr. Richards'
21 position here, we've got several Defendants. I don't know if
22 it's possible, but it seems to me that within this side over
23 here, what we have, basically, we got a Plaintiff over here,
24 and we've got an array of Defendants over here. Not that the
25 Plaintiffs are overmatched by any means. But when we're

1 talking about time, when I've indicated, you know, we may
2 have matters that are similarly situated, or the parties are
3 similarly situated with respect to a certain subject matter.
4 And it seems to me that, in those areas, there ought to be
5 just one allocation.

6 MR. KITCHEN: Well, Your Honor, multiDefendant cases
7 are tried every day all over this land.

8 THE COURT: I'm sure you've tried a number of them,
9 too.

10 MR. KITCHEN: I've lost a bunch of them. We're just
11 saying to keep it as equal as possible, if something comes up
12 that's extraordinary on either side, you can deal with that
13 when it comes up.

14 THE COURT: I'm certainly going to afford you that
15 opportunity. And, for that matter, depending on, in a trial
16 such as this, if there is a need for further evidence, if the
17 evidence that we take indicates that there is a genuine need
18 and necessity for further critical probative evidence, then
19 I'm going to give leave for a party to reopen the case and be
20 able to present that. All right?

21 MR. KITCHEN: Let me just -- before I sit down, it's my
22 understanding you told us you are denying the pretrial
23 order --

24 THE COURT: Oh, the proposed. I'm not going to enter
25 this Proposed Pretrial Order. What I'm going to do is, in

1 lieu of that, I'm going to -- we'll conduct the trial in the
2 fashion that I indicated.

3 Now, if we have some other suggestions, is there any
4 difficulty, for example, with the parties being able, on a
5 morning basis -- and hopefully, it will only be one time --
6 are the Defendants listening?

7 MR. BECK: Your Honor, yes, and we'll be fine. We've
8 already been discussing with Plaintiff's counsel --

9 THE COURT: They need to furnish you their list of --
10 when it's time for them in the morning, not when it's time
11 for them to present the case. You need to know their
12 witnesses, the order they're going to call them in, and that
13 sort of thing.

14 MR. BECK: Your Honor --

15 THE COURT: And the order of their exhibits, so, then,
16 each side will know what's coming next.

17 MR. BECK: Your Honor, Phil Beck. Mr. Boies and I have
18 discussed this already. They've told us the order of their
19 witnesses.

20 THE COURT: Excellent.

21 MR. BECK: I've told them the first several of ours,
22 and we're going to be exchanging exhibits so that everything
23 will go smoothly in the morning.

24 THE COURT: Well, one thing that I did notice in this
25 file looking through there, is that the Plaintiffs already, I

1 think, in the form of a proffer, with respect to certain
2 issues -- I mean, certain experts, had furnished a statement
3 of the facts and the opinions, I think, to some extent, or
4 the substance of the opinions of those experts.

5 And if the Defendants haven't done that, the Defendants
6 need to do that with respect to the Defendants' experts, so
7 that that could -- has that already been accomplished?

8 MR. BECK: What we did was slightly different. Their
9 proffer was in their Supreme Court papers. But what we did
10 is we agreed this morning to expedited discovery as to all
11 the experts.

12 And as we speak, I think my team is taking the
13 deposition of their experts.

14 And when we get done here, their team will be taking
15 ours, or the other way around. We're going to have all the
16 experts deposed today, so that everyone is satisfied with
17 that arrangement, I believe.

18 MR. BOIES: Yes, Your Honor.

19 THE COURT: Mr. Kitchen, anything further?

20 MR. KITCHEN: Your Honor, the only thing that jumps out
21 is, on these experts, we would ask the court in any given
22 subject matter, which you can certainly do under the statute,
23 limit to one expert in these subject matters.

24 THE COURT: That's another thing that I have meant
25 to --

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1 MR. BECK: We've done that.

2 THE COURT: I haven't thought about it.

3 MR. BECK: Yes, Your Honor, we've got one expert per
4 subject matter. We have -- I suppose, the only ambiguity in
5 that is I've got one man from each county coming up to talk
6 about how they maintain their machines. But I think that's
7 somewhat different. We need each county, the three for --
8 they're all like five minutes. And we need one for each
9 county. So that's not duplicative.

10 But in terms of experts, we only have one statistician.
11 We've only got one guy who is a mechanical engineer. We've
12 only got one person who is a chemist.

13 THE COURT: Why do you need witnesses on the machines?
14 Is there some objection to authenticity?

15 MR. BECK: They're claiming that the reason these
16 dimples ought to count as votes is because the machines did
17 not read properly. And that's what their expert is going to
18 say. And we have testimony going the other way.

19 THE COURT: Well, I suppose we can't -- we couldn't
20 have a proffer as to those witnesses, and see if there could
21 be a stipulation to avoid having to call all three. In other
22 words, a proffer of what that particular witness would say.

23 And that goes for any of your witnesses on either side.
24 If there are some where you have -- like we have
25 multiple counties here -- if it is possible, let me just ask

1 counsel to think about that. And if you can, then we could
2 have a stipulation and accept a proffer which would then save
3 us the necessity of calling that witness.

4 MR. BECK: We will confer on that, Your Honor.

5 THE COURT: All right, sir. Thank you, sir.

6 MR. GIBSON: Jerry Gibson for the Secretary of State.
7 And tomorrow you'll have someone that CAN talk.

8 MR. GREENBURG: Your Honor, this is Mr. Greenburg in
9 Miami.

10 THE COURT: See, in this operation, he is in charge.
11 Go ahead, sir.

12 (LAUGHTER.)

13 MR. GREENBURG: Your Honor, we have a written document
14 we received subpoena duces tecum. I can bring it up, and I
15 will assert to the Court that it is an official document of
16 what our machines showed. It will serve as a proffer, and we
17 would not have to bring up a witness to testify, if that's
18 acceptable to the Court.

19 THE COURT: Well, if that's -- it's acceptable to me,
20 if it's acceptable to the party who caused the issuance of
21 the subpoena.

22 Now, what is it? I thought that Mr. Greenburg -- you
23 all had can cleaned him out down there.

24 MR. GREENBURG: You have all our ballots, but we still
25 have a few scraps of paper down here.

1 THE COURT: Oh, no, I guess they're trying to get that.
2 Who is it that has -- what do you want from Mr. Greenburg?
3 Is what he said satisfactory? Who issued the subpoena?

4 MR. BOIES: Your Honor, we're not sure what he's being
5 asked to bring up. But if somebody was asked to bring
6 something up, and Mr. Greenburg will bring it and verify
7 that's what it is -- they don't have to bring a witness to
8 testify -- then we will accept Mr. Greenburg's
9 representation. I don't know exactly what he's been asked to
10 bring up.

11 THE COURT: What is it, Mr. Greenburg? We've got to
12 move along here. What is it they want?

13 MR. GREENBURG: It's a list of the problems that were
14 reported with Votomatics on election day.

15 THE COURT: And you've got such a list.

16 MR. GREENBURG: Yes, sir.

17 THE COURT: Do we know who it was prepared by?

18 MR. GREENBURG: Jesus Vasquez, who is the gentleman
19 who was subpoenaed.

20 MR. BECK: Judge, we subpoenaed Mr. Vasquez,
21 although -- I think we both subpoenaed Mr. Vasquez. We need
22 him for testimony on another issue, so Mr. Vasquez is going
23 to need to come.

24 THE COURT: Mr. Greenburg, the parties need
25 Mr. Vasquez.

1 MR. GREENBURG: He'll be there.

2 MR. BECK: I might say, we also, to save inconvenience
3 for witnesses, we subpoenaed somebody from Palm Beach to
4 bring up ballots from prior elections.

5 And if the counsel just brings up the ballots for prior
6 elections, and Mr. Boies agrees we don't need to authenticate
7 them with a witness, we can save that person, whoever it was,
8 a trip up here.

9 MR. BOIES: We can stipulate to that, Your Honor.

10 THE COURT: Palm Beach?

11 MR. ROJOS: Yes, sir, they may already be up there, but
12 I'll double-check, and if we can avoid that, that would be
13 wonderful.

14 THE COURT: All right. Otherwise, I suppose they'd
15 have to be here.

16 All right. Yes, sir?

17 MR. GIBSON: Jerry Gibson for the Secretary of State
18 and the Florida Election Canvassing Commission. Tomorrow
19 you'll have somebody that has a better voice than me.

20 We just want to make sure that our clients are not
21 lumped in with the Bush Defendants.

22 THE COURT: You're going to have your separate -- I'll
23 give you a brief Opening Statement, so all the parties can
24 establish their separate identities.

25 But, now, when your client has a similarly -- is in a

1 similarly situated position with respect to a subject matter,
2 then the maybe Defendant is going to assert that, and then I
3 don't need to have needless repetitive presentation.

4 MR. GIBSON: We understand that. And on the legal
5 issues and evidence, we have no problem.

6 THE COURT: And I'm not going to go over the same thing
7 just because your client might want to emphasize that same
8 point, again. If it's emphasized, once, I'm a fairly quick
9 read. I'll pick up on it.

10 MR. GIBSON: We won't do that, Your Honor. Thank you.

11
12 THE COURT: Now, who did I have back over -- I had one
13 Intervenor? Is that a matter that I needed to take up, I
14 believe that's the last thing.

15 MR. VEZINA: Yes, Rob Vezina on behalf of Speaker
16 Thrasher. We filed a Motion to Intervene this morning.

17 THE COURT: Any objection to the Motion to Intervene?

18 MR. BOIES: Yes, Your Honor.

19 THE COURT: I thought we'd take care of that in a
20 hurry, but go ahead.

21 MR. VEZINA: May I approach the podium?

22 THE COURT: You may.

23 MR. VEZINA: Your Honor, by way of very brief
24 background, I think as we all know --

25 THE COURT: Wait just a minute. I think I looked at

1 that motion, and that's just a motion, as I recall, just
2 briefly, looking through that, apparently, there would be
3 some positions on behalf of this -- it's an individual voter,
4 but, also, this will be an elector.

5 MR. VEZINA: Yes, sir, this is unique.

6 THE COURT: So I suppose it would be a little
7 difference in similarity between my other grouping here of
8 individual voters, to some extent.

9 What I have done, and let me go ahead and explain, so
10 maybe if it's satisfactory, it will save us some time and
11 perhaps remove some of the objection.

12 What I have given is an intervention, and we're not
13 going to have -- you can't have too many more people
14 wandering in to intervene, because we're going to have to
15 continue to move forward.

16 But you could have, perhaps, a limited grant of
17 intervention, and that would be a fairly -- that would be
18 severely limited with respect to, you know, participation.

19 MR. VEZINA: Yes, sir.

20 THE COURT: And I'm not going to permit any Intervenor
21 at this point, basically, just to seek any kind of relief
22 that is of a different type against any party in this action,
23 that is already in this action.

24 MR. VEZINA: Let me make three quick points if I may,
25 apropos to what you just said. Number one, Speaker Thrasher,

1 is, as you said an elector. So he is in a different position
2 here. And you've heard the Plaintiffs say this morning that
3 Mr. Kitchen seeks to invalidate the election of these
4 presidential electors. So Mr. Thrasher is one of those.

5 Secondly we don't need to and don't want to and don't
6 attempt to come in and make this any more complicated or
7 extensive than it already is.

8 We're not asking for time to examine the witnesses, or
9 do anything to further complicate the process.

10 We do, however, or would like, however, to move forward
11 tomorrow, with the Court's convenience, with a Motion to
12 Dismiss, which was an attachment to our Motion for
13 Intervention, and it's a dispositive Motion to Dismiss.

14 THE COURT: Is it already on the same ground, or a
15 subject that has already been -- that is pending in motions
16 to dismiss? That's what I'm going to hear initially, are all
17 matters that relate to the dismissal of the action, per se,
18 or any Motion For a Judgment on the Pleadings. Those type of
19 things really --

20 MR. VEZINA: This is not tangential, Your Honor. This
21 goes right to the heart of whether the contest statute is
22 applicable to presidential elections, presidential and vice
23 presidential elections.

24 THE COURT: Has that matter already been raised?

25 MR. BECK: Yes, by way of our defense, and in our

1 Motion to Dismiss.

2 THE COURT: This is an affirmative defense?

3 MR. BECK: I believe it is, Your Honor. What we had
4 anticipated on this issue, in terms of scheduling, was this
5 is a pretty complicated legal issue.

6 And, frankly, I don't think the Gore team has had a lot
7 of time and opportunity to respond to it. And rather than --
8 and I think they're entitled to, because it is a complicated
9 legal issue.

10 What we anticipated from our side, is suggesting to the
11 Court that, on issues such as that, which we think are very
12 important, but need time for the others to respond, and for
13 the Court to read and reflect on briefs from both sides,
14 that, rather than delay the commencement of evidence that, we
15 begin with the evidence.

16 And then after the Gore team has had a chance to read
17 our papers and theirs, and respond, and the Court has read
18 them all, then at somewhere along the way when there is a
19 logical break in the evidentiary presentation, we could take
20 those motions up.

21 They're very important to us, and we want to press them
22 strongly. But we don't want to do it in a way where others
23 haven't had a chance to read them and reflect on them. So
24 your suggestion, Your Honor, would be that tomorrow we begin
25 the evidentiary hearing, and that these matters that are

1 going to require some briefing and argument, that we do a
2 little later in the hearing.

3 THE COURT: Well, as far as that proceeding, that
4 suggestion, I think that would be well taken as far as that
5 particular item.

6 But, now, that's the same subject matter, you see, that
7 we're having raised here, really, by this Intervenor. And I
8 think that, with the same type of limitation I put on the
9 other Intervenors, there's no further right to -- in other
10 words, you've attached that with your motion, I assume.

11 MR. VEZINA: Yes, we did.

12 THE COURT: Which is what the rule -- and so you'll
13 stand on that pleading. You won't have a right to plead
14 further. And you don't have to respond to any other pleading
15 from any other party, except as such as might be directed to
16 your client.

17 But it seems to me that this is a matter where, as far
18 as this subject matter is concerned, if counsel can agree on
19 splitting up the time for that, then you can share the amount
20 of time that's going to be allocated on this side, and the
21 Plaintiff will have its time, and then this side will have
22 the same amount of time, but it could be allocated between
23 counsel, as you see fit, the same as I've ordered, with
24 respect to my other Intervenors.

25 MR. VEZINA: We're of like mind with counsel.

1 THE COURT: Now, let me find out what level of
2 objection, now, would there be?

3 MR. BOIES: Your Honor, there's no practical objection.
4 We don't think Mr. Thrasher has standing but the Court
5 doesn't need to resolve that now, and given the procedure
6 that is worked out, I don't think it is pressing to do
7 anything until tomorrow.

8 THE COURT: Well, I'll grant the Motion to Intervene
9 with reservation to you of whatever your condition is
10 concerning standing.

11 So I suppose, then, in conjunction with your
12 suggestion, Mr. Beck, at some appropriate time in the
13 proceeding, you all will be exchanging those, and I'll be
14 reading them, what, at three o'clock tomorrow night?

15 MR. BECK: We filed our motion --

16 THE COURT: I really hoped to see if we could complete
17 this, say, within a 12-hour trial. Now, if counsel is
18 realistically looking at -- if it's going to take longer --
19 the longer it takes with this, the longer we've got other
20 things, perhaps, that we're going to have to do with respect
21 to other evidence that may be -- if it's demonstrated as
22 necessary.

23 And it goes right back to the motions that have been
24 made, to begin with, that I've had to hold off on concerning
25 the so-called counting. But the determinations on validity

1 of a certain portion of the evidence in this case.

2 And I'm not going to -- we're not going to just try
3 this on all sort of matters for about three days, and leave
4 a day and half, or two days left to do the rest.

5 So we're going to have to do the best that we can. So
6 I suggest that each of you look at your presentations. Let's
7 slim it down to absolutely. Let's get all the fluff off, and
8 proceed in that fashion.

9 For what purpose, does the gentleman arise.

10 MR. MULLINS: Your Honor, I represent Nassau County.

11 THE COURT: We lost you. We need to apologize. You
12 have a matter that needs to be attended to?

13 MR. MULLINS: Your Honor, I apologize that I walked in
14 somewhat late. The traffic wasn't friendly coming in to
15 Tallahassee.

16 THE COURT: Did you have an objection to a subpoena?

17 MR. MULLINS: No, sir, we have no objection to that
18 subpoena. We received one for your ballots. We just wanted
19 to know if it was going to be granted, because the sheriff
20 was prepared to bring them.

21 And my second portion -- and you may have already dealt
22 with this -- is Plaintiffs filed a motion dealing with
23 Nassau County that I got about ten minutes to five last
24 night. And we have not had a chance to properly respond. We
25 would do so in the morning with the affidavits and so forth.

1 I assume that's acceptable.

2 THE COURT: Well, now, affidavits, what we have is a
3 trial. And the affidavits, the last time I looked, that's
4 hearsay.

5 MR. MULLINS: Well, we won't use affidavits.

6 THE COURT: Unless the objection is waived.

7 MR. MULLINS: I prefer live witnesses and we have those
8 here. They're here for that purpose.

9 THE COURT: We won't be able to try this case on
10 affidavits with respect to all counsel.

11 MR. MULLINS: Thank you.

12 THE COURT: Now, as far as the -- when you're talking
13 about ballots in Nassau County, can I put Nassau on the same
14 basis -- perhaps, I already had -- with respect to the other
15 counties? I'm going to order that those subpoenas be held in
16 suspense; in other words, I'm going to suspend the execution
17 on those subpoenas. But I'm going to order, and I'm going to
18 charge and instruct you to instruct your client and anyone
19 else that may have anything to do with those ballots, that
20 they're being impounded pursuant to my bench order here at
21 this time, that no one is to have any access to those records
22 from this time forward, pending further order, in any -- for
23 any reason, or in any manner, without a prior leave, leave of
24 Court.

25 MR. MULLINS: Thank you.

1 THE COURT: Is that satisfactory?

2 MR. RICHARD: Okay.

3 MR. DOUGLASS: Your Honor, before he leaves, we would
4 like to suggest that we confer with counsel and find out what
5 the witnesses are going to say. And if necessary, after that
6 discussion, with your permission, take their depositions this
7 evening.

8 They're here, he said.

9 MR. MULLINS: That would that be agreeable.

10 THE COURT: Very good. It would be so ordered. All
11 right if there is no other further --

12 THE COURT ADMINISTRATOR: The two parties that we were
13 able to raise, Pinellas County attorney's office, and Bill
14 Jennings have passed a note to me. Do you wish to have me
15 raise them on the telephone to hear their objection.

16 THE COURT: No, the one, I instructed, wasn't it
17 Mr. Rutledge -- who was going to notify --

18 THE COURT ADMINISTRATOR: Pinellas?

19 THE COURT: Pinellas? Well, if they didn't appear and
20 didn't provide for it, I suppose they'll just have to do
21 whatever it is they think is best, if they didn't attend the
22 hearing to find out what was going to happen.

23 MR. DOUGLASS: We have one other request to ask, many
24 people have asked us to please bring Mr. Greenburg, so we can
25 see him.

HEARING before JUDGE SAULS, 12/1/00

1 THE COURT: Mr. Greenburg? Did you lose him?

2 MR. GREENBURG: I'm here, Your Honor.

3 THE COURT: All right. That was Mr. Douglass here in
4 Tallahassee. He wanted us to extend all of our wishes that
5 we're anxious to see you up here in Tallahassee.

6 MR. GREENBURG: It's no great treat, but I'll be there.

7 THE COURT: Thank you very much. That will conclude
8 the hearing.

9 (HEARING CONCLUDED AT 4:23 P.M.)

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HEARING before JUDGE SAULS, 12/1/00

CERTIFICATE OF REPORTERSTATE OF FLORIDA:
COUNTY OF LEON:

I, **B. J. QUINN**, Certified Realtime Reporter,
Registered Professional Reporter, and Notary Public in and for the
State of Florida at Large:

DO HEREBY CERTIFY that the foregoing hearing
was taken before me at the time and place therein designated; that
before testimony was taken, the witness was duly sworn; that my
shorthand notes were thereafter transcribed, via computer, under
my supervision, and the foregoing pages numbered 1, through 42,
are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the parties, nor relative
or employee of such attorney or counsel, or financially interested
in the foregoing action.

WITNESS MY HAND AND SEAL this, the 11th day
of DECEMBER, A.D., 2000, IN THE CITY OF TALLAHASSEE, COUNTY
OF LEON, STATE OF FLORIDA.



B. J. Quinn
MY COMMISSION # CC603438 EXPIRES
March 20, 2001
BONDED THRU TROY FAIN INSURANCE, INC.

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My Commission Expires March 20, 2001

CERTIFICATE OF NOTARYSTATE OF FLORIDA:
COUNTY OF LEON:

I, **B. J. QUINN**, Notary Public in and for the
State of Florida at Large, do hereby certify that the witness
personally appeared before me and was first duly sworn by me to
testify to the truth on the date and time indicated herein.



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December 2, 2000
Opposition to Plaintiffs' Motion

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION**

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

CASE NO: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL,

Defendants.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO RESOLVE FACTUAL AND
LEGAL ISSUES OF COUNT III**

Defendants George W. Bush and Dick Cheney hereby oppose and object to Plaintiffs' Motion to Resolve Factual and Legal Issues of Count III. Because Plaintiffs' motion relies on disputed material facts, Plaintiffs are not entitled to relief as a matter of law. Moreover, even if those facts were not in dispute, Plaintiffs would not be entitled to relief because their claims are unsupported by the law.



I. Relief Cannot be Granted on Count III as a Matter of Law Because Numerous Material Facts Are in Dispute.

Plaintiffs' motion that the Court should resolve Count III purely as matter of law relies on the contention that there are no material disputed facts concerning the conduct of the election, the machine recount, and the certification process in Nassau County. To the contrary, numerous material facts asserted by Plaintiffs are disputed, and Plaintiffs utterly fail to acknowledge other critical facts. In view of those circumstances, relief cannot be granted on Count III without discovery and an evidentiary hearing on the facts surrounding the Nassau County Canvassing Board's mandatory recount and subsequent certification of the correct elections returns for that county.

The contested facts asserted by Plaintiffs and the bases upon which Defendants dispute them are as follows. Plaintiffs note that the Nassau County Canvassing Board certified the results of the automatic machine recount. *See* Mot. ¶ III(d). But Plaintiffs' description omits the critically important fact that the County Canvassing Board decided to submit the original certified count because the Board realized, and made the specific determination, that the results of the automatic machine count were *incorrect*. Shirley King, the Nassau County Supervisor of Elections, and is a Democrat, discovered soon after the machine recount was completed that her employees had failed to conduct the recount properly. Specifically, county employees had failed to separate all the ballots on

which presidential votes were cast from the other ballots cast in Nassau County.

As Ms. King notes in the attached affidavit, “I discovered the error and determined the cause of the error. . . . I determined that my assistants, in placing the ballots in the machine for the recount, omitted 218 of the Presidential ballots.” *See* Exh. A. As discussed more fully below, a county canvassing board is not required to certify an inaccurate canvass; thus, these facts clearly are material to whether the Canvassing Board’s certification decision complied with Florida election law.

Plaintiffs further allege that when the Nassau County Canvassing Board met to ensure that it had included the most accurate returns in its final certification, the Board failed to comply with the notice requirements of Florida’s “sunshine” law, section 286.011, FLA. STAT. (2000). This is simply untrue — the County Canvassing Board publicized its meeting in several ways. As indicated by the attached affidavits of Shirley King and J.M. Oxley, Jr., the Clerk of the Nassau County Circuit Court, *see* Exhs. A and B, notice of the meeting was posted on the two doors of the Supervisor of Elections office, at the entrance to the County Public Works Department, and at the temporary location of the Nassau County Courthouse. Fax notices were sent to all party representatives who had attended the Canvassing Board meeting at which the results of the November 7 election were certified, and various interested parties were notified by telephone. Notice was also published in the FLORIDA TIMES-UNION newspaper on November 23,

2000, and the press was notified of the date and time of the meeting. These material facts, which Plaintiffs dispute, are critical to resolution of Plaintiffs' claim under Florida's "sunshine" law.

Plaintiffs further allege that the appointment of Marianne Marshall to the County Canvassing Board violated section 102.141(1)(b) of the Florida election code, because she was a candidate for county commissioner in the November 7 election. What Plaintiffs fail to explain is that Ms. Marshall was sworn in as a county commissioner on November 21, 2000, so that she was no longer a candidate for any office when she participated in the November 24 certification meeting. Plaintiffs also ignore that Marshall did not participate in the *canvass* – her only involvement was to vote with the two other Democratic members of the Board to certify the correct election results to the Secretary of State. *See* Exh. C. These facts are clearly material to the Canvassing Board's compliance with section 102.141.

Plaintiffs assert incorrectly that no one had protested the results of the automatic machine recount as of the November 24 meeting of the County Canvassing Board. As the attached letter shows, Marshall Wood, a voter registered in Nassau County, objected to the certification of the automatic recount because he was aware that the recount had failed to include 218 ballots. His letter is attached as Exhibit D. This disputed material fact is clearly relevant to

Plaintiffs' argument that the County Canvassing Board had no authority to reject the machine recount in the absence of a protest by a party in interest.

Plaintiffs also allege that the County Canvassing Board "had previously rejected [the November 7 results] as incorrect." Mot. ¶ III(m). Actually, County the Canvassing Board never rejected the November 7 returns. The Board conducted the machine recount on November 8 only because the close margin in the statewide vote triggered a statutorily mandated machine recount of the presidential election in all counties, *see* 102.141(4), FLA. STAT., *not* because there had been any inaccuracy in the original returns in Nassau County.

Plaintiffs proffer John Cascone's affidavit as evidence that someone objected to the accuracy of the November 7 initial count before that count was certified on November 24. But the attached affidavit by Shirley King states, to the contrary, that she recalls no objection to the Board's decision to amend its certification to reflect the more accurate November 7 results until *after* the Board had already filed the amended certification on November 24, 2000. *See* Exh. A. Dueling affidavits such as these create the starkest form of factual dispute, and this dispute bears heavily on Plaintiffs' claim that the County Canvassing Board should have certified the November 8 returns.

The primary fact that Defendants altogether ignore in their Motion is that the November 8 automatic machine recount was conducted improperly and entirely

ignored 218 ballots. As set forth in the attached affidavits and exhibits, Ms. King realized, soon after the November 8 machine recount had been completed, that her employees had failed to run 218 presidential ballots through the machine in the recount. *See* Exhs. A, D, E. Thus, the results of the machine recount were fundamentally inaccurate. Not wanting to disenfranchise 218 voters who had cast valid votes, Ms. King called a public meeting of the Board to address whether the Board should accept the original returns or the inaccurate machine recount. By unanimous vote of the Board, and after being advised by the State Division of Elections that submission of an amended return was permissible until November 24, 2000, Ms. King certified the accurate results obtained on November 7, 2000. *See* Exhs. F, G. These material facts are disputed and obviously are critical to a determination whether it was permissible for the Board to certify the November 7 results rather than the November 8 machine recount.

Another critical omission is that Plaintiffs have failed even to allege that, were the 218 excluded votes now counted, the Democratic Presidential Electors nonetheless would have maintained the net 51 votes reflected by the machine recount. At very least, this raises a disputed issue of material fact that would have to be resolved before any relief could be granted on Count III.

II. Section 102.141 Does Not Mandate the Certification of an Irregular or False Return.

A. The Automatic Machine Recount Did Not Count All Votes Cast

Plaintiffs' argument that section 102.141(4) required the Board to certify the November 8 machine recount is misplaced in this case because that section does not require certification of an incomplete or irregular return. Section 102.141(4) requires that "[i]f the returns for any office reflect that a candidate was defeated or eliminated by one-half of a percent or less of the votes cast for such office, ... the board responsible for certifying the results of the vote on such race ... shall order a recount of the votes cast with respect to such office" As discussed above, the Nassau County Supervisor of Elections determined that, through an inadvertent error, the machine recount did not include all of the ballots validly cast in the presidential election in Nassau County, whereas the original and finally certified election-night returns did reflect the will of the voters in Nassau County. The language of section 102.141(4) clearly contemplates that the automatic machine recount will involve all ballots. If it did not, the statute would have no purpose. The objective of a recount is to determine who won the majority of the valid votes. This is ascertained by a machine count of every paper ballot for a tabulation of the validly cast votes. Because inadvertent error prevented such a tabulation, the November 8 machine recount was not required to be certified under section 102.141(4), FLA. STAT.

B. The Original Returns Are More Accurate Than November 8 Recount

A count of only some of the ballots submitted in the County cannot, by definition, be as accurate as a count of all votes that have been validly cast. The November 8 return, which did not count the validly cast votes of 218 Nassau County citizens, is facially inaccurate and therefore irregular and false. Section 102.141(4) does not require the County Canvassing Board to submit the results of an improperly conducted machine count merely because it was the *most recent* count conducted.

C. The County Canvassing Board Did Not Violate Section 102.141(4) and Acted in Good Faith.

Plaintiffs' reliance on *Morse v. Dade County Canvassing Board*, 456 So. 2d 1314 (3rd DCA Fla. 1984), is misplaced. Plaintiffs claim that *Morse* demands that county canvassing boards use only the recount tallies when a recount has been conducted under section 102.141(4). But this proposition presumes that the section 102.141(4) recount was conducted properly and counted all the votes. Otherwise, as already discussed, the absurd result would be that recount results, potentially riddled with errors, would automatically take precedence over more accurate original results. In addition, *Morse* is inapplicable because the returns in that case had not been certified, *id.* at 1316, and a central issue in that case was whether a county canvassing board had standing to question the results of an election. *Id.*

In an election contest where there is no allegation of fraud or intentional wrongdoing, moreover, Plaintiffs must show substantial noncompliance with the

election laws and that the result did not reflect the will of the voters. *See Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720, 725 (Fla. 1998).

The Nassau County Canvassing Board substantially complied with Florida's election laws when it amended its certification to reflect the election-night results because the machine recount, through inadvertence, had not counted all the validly cast votes.

Regardless, it is not possible to say that the original and final certification did not reflect the will of the voters. Nassau County conducted a recount without 218 of the votes cast. *See* Exh. A. To grant the relief Plaintiffs request would disenfranchise those 218 voters, whose votes were clearly valid and, as far as the record reveals, reflected a clear intention to vote for a particular candidate. A "court should not frustrate the will of the voters if the failure to perform official duties is unintentional and the will of the voters can be determined." *Beckstrom*, 707 So. 2d at 726. The Supervisor of Elections and the County Canvassing Board acted properly when they detected the error in the recount, contacted the Division of Elections concerning the problem, and appropriately acted on the direction received. *See* Exhs. A, F, G. The canvassing board acted in good faith, substantially complied with the election statutes, and certified returns that most accurately reflected the will of the voters.

III. A Reversal of Nassau County's Certification Would Not Change the Result of the Election.

Even if Plaintiffs could prevail on some of the elements of their claim under Count III, it would not change the result of the election in Nassau County or in Florida, as required by section 102.168. The difference between Nassau County's original count and the incorrect recount was only 51 votes. The gap between the votes cast for the slate of Republican Presidential Electors and Democratic Presidential Electors was 537 votes. Thus, Plaintiffs' claim fails to meet a threshold requirement established by the election code.

IV. The November 24 Nassau County Canvassing Board Meeting of Was Legally Conducted.

The Nassau County Canvassing Board's November 24th meeting was lawfully conducted. The Board satisfied the requirements of Florida's "sunshine" law, section 286.011, FLA. STAT., by providing legally sufficient public notice of its meeting. Further, the composition of the Board at that meeting complied with section 102.141(1) because Marianne Marshall was not a candidate for any office being canvassed on that date. Indeed, she had already been sworn in as county commissioner.

A. Ample Notice of the Canvassing Board Meeting Was Given.

Florida's "sunshine" law requires that governmental bodies give notice of their meetings and conduct those meetings in public. *See* FLA. STAT. § 286.011.

The Nassau County Canvassing Board's November 24 meeting to determine whether to certify the results of the automatic machine result complied with those requirements. Plaintiffs do not dispute that the meeting was held publicly. They assert, contrary to the facts, that the Board failed to provide proper notice of the meeting. As discussed above and in the attached affidavit of Shirley King, prior public notice of the meeting was given by several means: published notice in the FLORIDA TIMES UNION, a newspaper of wide circulation in the County, distributed to the public by 6:00 A.M. on November 23, 2000; public notices posted on the Supervisor of Election's doors, the entrance to the County Public Works Department, and the temporary location of the Nassau County Courthouse; faxed notices to party representatives; telephonic notification to various persons; and notification to the press. These measures clearly provided the reasonable notice required by Section 286.011. *See Lyon v. Lake County*, 765 So. 2d 785, 790 (5th DCA Fla. 2000); OP. FLA. ATTY. GEN. 73-170 (May 17, 1973).

B. No Misconduct By County Canvassing Board Under Election Code.

1. Marshall Properly Participated in the Board's Certification on November 24.

Plaintiffs' allegation that Marianne Marshall's participation in the Board's meeting and deliberations concerning the amended certification filed on November 24 was improper under section 102.141(1)(b) is unsupported by fact or law.

Marianne Marshall was not a “candidate with opposition in the election being canvassed” when she was appointed by the County Commission to the Board. First, she had not yet been appointed when the election was “being canvassed.” The election was canvassed on November 7 and 8, nearly two weeks before Ms. Marshall was appointed to the county board. Her only involvement in the amended certification process was to vote in favor of amending the November 24 certification to reflect the correct election results. *See* Exh. C. And, although she had been a candidate for county commissioner in the November 7 election, Ms. Marshall was sworn in as a county commissioner on November 21, 2000; thus, she was no longer a candidate for any office when she participated in the Board’s meeting and certification on November 24. Finally, even if the Board’s meeting on November 24 had been a canvass, that meeting affected only the election of presidential electors, which was not a race in which Ms. Marshall was a candidate. For those reasons, Plaintiffs’ argument that Ms. Marshall’s appointment violated the Florida election code is without merit.

2. At Most, Marianne Marshall’s Participation on the Board was Harmless Error.

Even if this Court were to find that Marianne Marshall was improperly substituted onto the Board, that fact merely amounts to harmless error. On November 24, the Canvassing Board voted 3-0 to amend its certification to

recertify the original election night certification. *See* Exh. G. Because a majority voted for this action, Ms. Marshall's vote was unnecessary in this decision and therefore her participation was irrelevant and harmless.

In *Vans Agnew v. Davidson*, 156 So. 7 (Fla. 1934), the Supreme Court of Florida found that the votes of only two members of a three-member public board were necessary for the board's action to be legitimate. The Court particularly noted that in election cases: "A certificate signed by a majority of the inspectors is a valid return. The omission of one to perform his duty is not even an irregularity in the return." *Id.* at 9 (quoting *Bisbee v. Board of State Canvassers*, 17 Fla. 29 (1879)). Logically, therefore, a certification approved by all three members of a board in which one member is allegedly unqualified is presumptively valid. Participation by an unqualified member when a majority of qualified members voted for certification is harmless error that cannot, by definition, affect the outcome of an election.

V. CONCLUSION

In sum, Plaintiffs cannot prevail as a matter of law on Count III of their Complaint due to the plethora of disputed factual questions that are central to any ruling on that Count. Based on the evidence cited herein by Defendants, it is quite clear that, contrary to Plaintiffs' assertions, the election returns tabulated in Nassau County on November 7 were more accurate than the returns produced by the

required manual recount on November 8. In light of this, the Board acted well within its discretion, and not in violation of the law, when it decided to accept the November 7 returns. Moreover, the Board's decision was rendered by a legally constituted panel of three qualified County Canvassing Board members, was issued during a legally called and open meeting and, in any event, did not affect the outcome of the election statewide. Defendants respectfully ask that Plaintiffs' motion be denied.



Respectfully submitted,

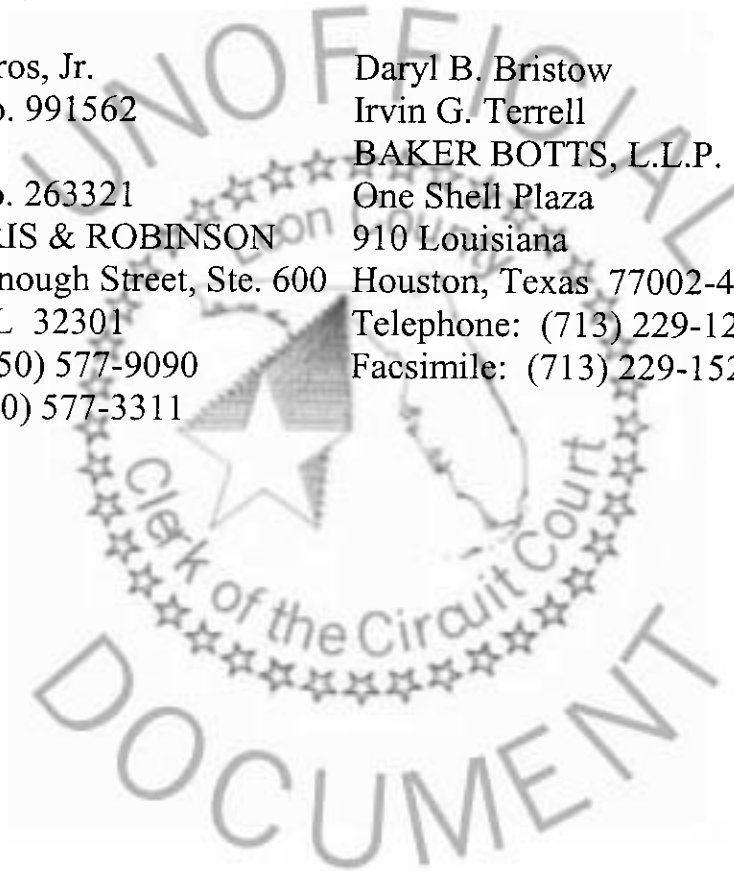
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2000, a true and correct copy of the foregoing Memorandum in Opposition to Plaintiffs' Motion to Resolve Factual and Legal Issues of Count III with Memorandum of Law was served by hand delivery or by fax to

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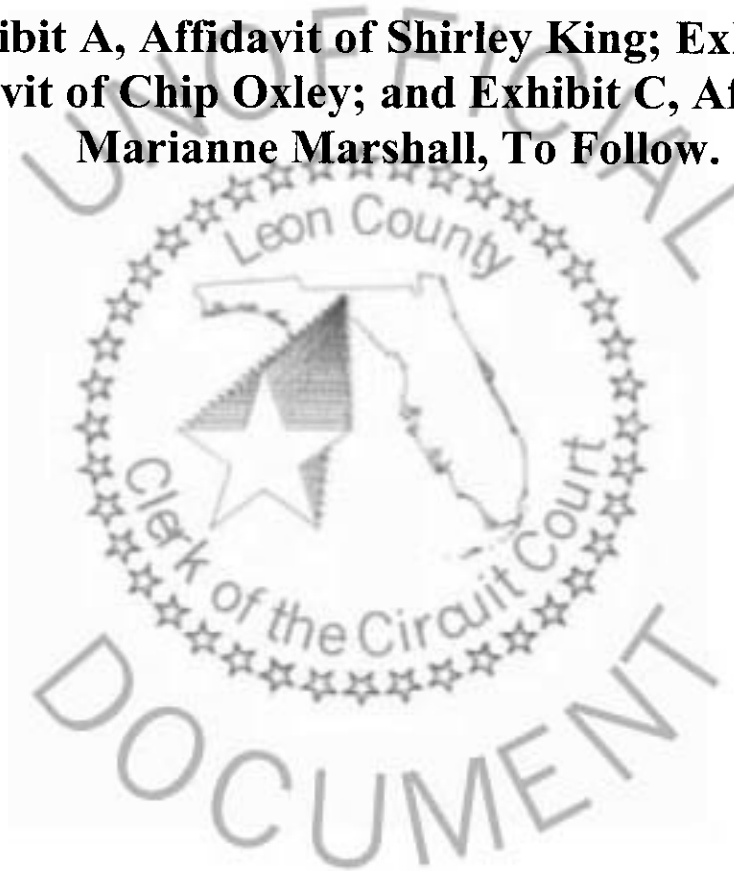
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Board



Attorney for Defendants Bush and Cheney

**Exhibit A, Affidavit of Shirley King; Exhibit B,
Affidavit of Chip Oxley; and Exhibit C, Affidavit of
Marianne Marshall, To Follow.**



MARSHALL E. WOOD, P.A.
Attorney at Law
SUITE 100, ALLAN BUILDING
303 CENTRE STREET
FERNANDINA BEACH, FLORIDA 32034

MARSHALL E. WOOD

904/277-4666
FAX # 904/277-6611

November 22, 2000

Shirley King, Supervisor of Elections
11 North 14th Street
Fernandina Beach, FL 32034

Dear Mrs. King:

As the attorney for the Nassau County Republican Party, I hereby request the votes cast in the November 7, 2000 General Election for President of the United States be counted - not the automatic recount figures conducted in Nassau County on November 8, 2000 - and the Canvassing Board's certification be amended to reflect the original count.

As a basis of this motion, I submit the following for your consideration.

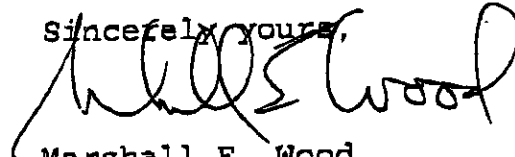
1. Your letter to the Division Director of the Division of Elections indicating that the recount was flawed and resulted in a loss of 218 ballots.
2. The very recent decision of the Florida Supreme Court indicating the will of the voters is paramount in decisions regarding elections. Given the fact 218 of the "A" ballots were overlooked in sorting the ballots, it would seem that 218 people were disenfranchised as a result of the flawed recount.

Please consider this as an urgent request to certify the appropriate count at your earliest convenience so that the results may be certified to the Secretary of State by November 26, 2000.

Shirley King, Supervisor of Elections
November 22, 2000
page 2

Thank you for your consideration of this request.

Sincerely yours,



Marshall E. Wood

MEW/jm



AFFIDAVIT OF EDWARD KAST

STATE OF FLORIDA

COUNTY OF LEON

Comes now, Edward Kast, Assistant Director, Division of Elections, Office of the Secretary of State, State of Florida and says as follows:

1. I am employed as the Assistant Director in the Division of Elections, Office of the Secretary of State, State of Florida. My address is Room 1801, Capitol Building, Tallahassee, Florida 32399.
2. I am over the age of 18 and of sound mind.
3. I am Assistant Director of the Division of Elections. On November 22, 2000, I received a letter from Shirley King, Supervisor of Elections, Nassau County. The letter identified a discrepancy between the returns obtained from the November 7, 2000, tabulation of votes and the November 8 automatic recount tabulation. Ms. King stated that handling errors, which occurred during the recount, caused an inaccurate tabulation.
4. I spoke with Ms. King on November 22, 2000, and advised her that if the Nassau County Canvassing Board wanted to file an amended certification, in light of the handling errors that occurred during the November 8 recount, then the Board must submit such amendments before 5 p.m. on Sunday, November 26, 2000, pursuant to the Florida Supreme Court's ruling in Palm Beach County Canvassing Board v. Harris.


Further affiant saith not.


EDWARD KAST

State of Florida
County of Leon

Sworn to and subscribed before me this 1st day of December, 2000, by Edward Kast, who is personally known to me

*showed drivers license for
proof.*


Notary Public



Camille B. Rawls
MY COMMISSION # CC748502 EXPIRES
September 21, 2002
BONDED THRU TROY FAIN INSURANCE, INC.



SHIRLEY N. KING

Supervisor of Elections

NASSAU COUNTY

11 North 14th St., Ste. 11

Fernandina Beach, Florida 32034-3106

November 21, 2000

Telephone: (904) 321-5735

(904) 879-1095

(800) 958-3494

Fax: (904) 321-5736

**Mr. Clayton Roberts
Division Director
Division of Elections
1801 Capitol Building
Tallahassee, FL 32399-0260**

Dear Mr. Roberts;

I am requesting the votes cast in the November 7th, 2000 General Election for President of the United States be counted, not the Automatic Recount figures conducted in Nassau County on November 8th, 2000.

In conducting the Automatic Recount, only "A" Ballots, identified with a red stripe down one side were counted containing the President and Vice President race. Erroneously 218 of the "A" Ballot cards were overlooked in sorting the ballots, as well as during the tabulation process.

The precinct by precinct results indicate as well during the Automatic Recount, precinct number 7 and 21 were tabulated together. During the sorting of the "A" Ballots these two precincts were enclosed in one ballot box transportation container, ballots from both precincts were intermingled together therefore, unable to identify which ballots belonged to which precinct, they were tabulated together.

With the above explanation, I request the appropriate count from the November 7th, 2000 General Election contains the right count and should overrule the Automatic Recount figures which were submitted on November 8th, 2000.

Should you have any questions regarding the above, please do not hesitate to contact this office for assistance.

Sincerely,

Shirley N. King

**Shirley N. King
Supervisor of Elections
Nassau County**

**ENCLS: RECORD OF ELECTIONS BY PRECINCT NOV 7TH GENERAL AND NOV 8TH RECOUNT
CERTIFICATE OF COUNTY CANVASSING BOARD FROM NOVEMBER 7TH GEN COUNT**

DIV2000.DOC



SHIRLEY N. KING

Supervisor of Elections

NASSAU COUNTY
11 North 14th St., Ste. 1
Fernandina Beach, Florida 32034-3106

Telephone: (904) 321-5735
(904) 879-1095
(800) 958-3494
Fax: (904) 321-5736

TO: Clay Roberts, Director, Division of Elections

DATE: November 24, 2000

FROM: Shirley N. King
Supervisor of Elections
Nassau County

SUBJECT: Amended federal returns from county canvassing board

The Nassau County General Election canvassing board voted 3 to 0 to amend the regular returns and the ten day returns.

Please find enclosed the certificate of county canvassing board for the regular returns and the ten day returns.

If you have any questions please call my office.

Sincerely,

Shirley N. King
Supervisor of Elections
Nassau County, FL

SNK:jt

December 4, 2000

**Judge Sanders Sauls' Ruling Against Gore. Transcript of Statement
from the Bench.**

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: CV 00-2808

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for Vice President of the United States,

Plaintiffs,

v.

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL.,

Defendants.

FILED
00 DEC -4 PM 5:14
DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

FINAL JUDGMENT

This action was tried before the court. The findings and conclusions in the ruling of the court from the bench in open court this day shall become a part hereof. Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs Albert Gore, Jr. and Joseph I. Lieberman shall take nothing by the action and the Defendants may go hence without day.

DONE AND ORDERED in Chambers this 4th day December, 2000.



N. SANDERS SAULS
CIRCUIT JUDGE

Copies furnished to:

See attached service list

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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

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ALBERT GORE, JR., et al.,

CASE NO.00-2808

Plaintiffs,

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vs.

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KATHERINE HARRIS, as Secretary

7

of State, STATE OF FLORIDA, et al.,

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Defendants.

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IN RE:

Ruling

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BEFORE:

HONORABLE N. SANDERS SAULS
Circuit Court Judge

14

DATE:

Monday, December 3, 2000

15

TIME:

Commenced: 4:30 p.m.

16

Concluded: 6:31 p.m.

17

LOCATION:

Leon County Courthouse

18

Courtroom 3D

19

Tallahassee, Florida

REPORTED BY:

B. J. QUINN, RPR, CMR, CP
Certified Realtime Reporter
Notary Public in and for the
State of Florida at Large

21

22

23

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0002

1

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0004

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FRANK MYERS, ESQUIRE

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-and-

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TERRELL C. MADIGAN, ATTORNEY AT LAW

-and-

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* * * * *

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ITEM

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PROCEEDINGS COMMENCEMENT

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CERTIFICATE OF REPORTER

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PROCEEDINGS

THE COURT: All right. At this time we'd call the case of Albert Gore, et al., versus Catherine Harris, et al., Case Number 00-2808.

At this time, the action having been tried, the Court at this time will enter its ruling from the bench, as to the exigencies surrounding this case, the ruling and findings shall be incorporated into the final judgment, and shall be immediately entered herein.

At this time the Court finds and concludes as follows: The complaint filed herein states in its first paragraph that this is an action to contest the state certification in the presidential election of 2000, asserting that the state Elections Canvassing Commission's certification on in November 26th, 2000, was erroneous, and the vote totals wrongly included illegal votes, and do not include legal votes that were improperly rejected.

Plaintiffs further contest the State of Florida's certification of the electors for George W. Bush and Richard Cheney as being elected.

They further challenge and contest the election certifications of the Canvassing Boards of Dade, Palm Beach, and Nassau Counties.

As to the Dade Canvassing Board, the Plaintiffs seek to compel the Dade board to include in its certification, and

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the state elections canvassing commission to include in the certification, a six-vote change in favor of Plaintiffs, resulting from the board's initial test and partial manual recount of one-percent of the countywide vote total conducted with respect to three precincts, designated by the Plaintiffs designee.

Also, additional votes manually hand-counted, and a further partial recount total resulting from the board's discretionary decision to stop completion of a full manual recount of all the votes and all the precincts in Dade, because of insufficiency of time to complete the same.

These represent the results of the count of an additional 136 precincts of the 635 precincts in Dade County.

And, also, the results of any Court order, manual review and recount of some nine to ten thousand voter cards or ballots, which at Plaintiff's request, have been separated, or were separated as alleged undervotes by the Dade Canvassing Board, or the Dade Supervisor of Elections, as a result of all of the countywide ballots being processed through the counting machines a third time and being

21 nonreadable by the machine.

22 As to the Palm Beach Canvassing Board, Plaintiffs seek
23 to compel the Palm Beach board to include in its
24 certification, and the State Elections Canvassing Commission
25 to include, in the state certification, additional votes

0008

1 representing the results of an attempted partial
2 certification of results, completed before the November 26th,
3 2000 deadline, mandated by the Florida Supreme Court, as well
4 as the additional remainder of the results of the manual
5 recount, which was completed after the deadline, and the
6 attempted certification thereof on December 1.

7 And in addition, the result of any Court ordered manual
8 review and recount of some 3,300 ballots which were objected
9 to during the Palm Beach board's manual recount which
10 Plaintiffs allege should have been counted as ballot votes
11 because that board used an improper standard.

12 As to Nassau, the Nassau County Canvassing Board, the
13 Plaintiffs seek to compel the Nassau Board to amend its
14 certification, and the State Elections Canvassing Commission
15 to amend the state certification to reflect and include the
16 results of the board's machine recount, rather than the
17 results of the board's original machine count, thereby
18 resulting in a favorable net gain to Plaintiffs, of 51 votes.

19 It is the established law of Florida as reflected in
20 State v. Smith that where changes or charges of irregularity
21 of procedure or inaccuracy of returns in balloting and
22 counting processes have been alleged, that the Court must
23 find as a fact that a legal basis for ordering any recount
24 exists before ordering such recount.

25 Further, it is well established and reflected in the

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1 opinion of Judge Joanos and Smith v. Tine, that in order to
2 contest election results under Section 102.168 of the Florida
3 Statutes, the Plaintiff must show that, but for the
4 irregularity, or inaccuracy claimed, the result of the
5 election would have been different, and he or she would have
6 been the winner.

7 It is not enough to show a reasonable possibility that
8 election results could have been altered by such
9 irregularities, or inaccuracies, rather, a reasonable
10 probability that the results of the election would have been
11 changed must be shown.

12 In this case, there is no credible statistical
13 evidence, and no other competent substantial evidence to
14 establish by a preponderance of a reasonable probability that
15 the results of the statewide election in the State of Florida
16 would be different from the result which had been certified
17 by the State Elections Canvassing Commission.

18 The Court further finds and concludes the evidence does
19 not establish any illegality, dishonesty, gross negligence,
20 improper influence, coercion, or fraud in the balloting and
21 counting processes.

22 Secondly, there is no authority under Florida law or

23 certification of an incomplete manual recount of a portion
24 of, or less than all ballots from any county by the state
25 elections canvassing commission, nor authority to include any

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1 returns submitted past the deadline established by the
2 Florida Supreme Court in this election.

3 Thirdly, although the record shows voter error, and/or,
4 less than total accuracy, in regard to the punchcard voting
5 devices utilized in Dade and Palm Beach Counties, which these
6 counties have been aware of for many years, these balloting
7 and counting problems cannot support or effect any recounting
8 necessity with respect to Dade County, absent the
9 establishment of a reasonable probability that the statewide
10 election result would be different, which has not been
11 established in this case.

12 The Court further finds that the Dade Canvassing Board
13 did not abuse its discretion in any of its decisions in its
14 review in recounting processes.

15 Fourthly, with respect to the approximate 3,300
16 Palm Beach County ballots of which Plaintiffs seek review,
17 the Palm Beach Board properly exercised its discretion in its
18 counting process, and has judged those ballots which the
19 Plaintiff wish this Court to, again, judge de novo.

20 The old cases upon which Plaintiff rely are rendered
21 upon mandamus prior to the modern statutory election system
22 and remedial scheme enacted by the Legislature of the State
23 of Florida in Chapter 102 of the Florida Statutes.

24 The local boards have been given broad discretion which
25 no Court may overrule, absent a clear abuse of discretion.

0011

1 The Palm Beach County board did not abuse its
2 discretion in its review and recounting process.

3 Further, it acted in full compliance with the order of
4 the Circuit Court in and for Palm Beach County.

5 Having done so, Plaintiffs are estopped from further
6 challenge of this process and standards. It should be noted,
7 however, that said process and standards were changed from
8 the prior 1990 standards, perhaps contrary to Title III,
9 Section (5) of the United States code.

10 Furthermore, with respect to the standards utilized by
11 the Board in its review and counting processes, the Court
12 finds that the standard utilized was in full compliance with
13 the law and reviewed under another standard would not be
14 authorized, thus creating a two-tier situation within one
15 county, as well as with respect to other counties.

16 The Court notes that the Attorney General of the State
17 of Florida enunciated his opinion of the law with respect to
18 this, in a letter dated November 14, 2000, to the Honorable
19 Charles E. Burton, Chair of the Palm Beach County Canvassing
20 Board, which, in part, is as follows: "A two-tier system
21 would have the effect of treating voters differently,
22 depending upon what county they voted in."

23 The voter in a county where a manual count was
24 conducted, would benefit from having a better chance of

25 having his or her vote actually counted, than a voter in a
0012
1 county where a hand count was halted. As the State's chief
2 legal officer, I feel a duty to warn that the final certified
3 total for balloting in the State of Florida includes figures
4 generated from this two-tier system of differing behavior by
5 official Canvassing Boards, the State will incur a legal
6 jeopardy under both the United States and the state
7 constitutions.

8 This legal jeopardy could potentially leave Florida
9 having all of its votes, in effect, disqualified, and this
10 state being barred from the Electoral College's election of a
11 President.

12 The Court finds further that the Nassau County
13 Canvassing Board did not abuse its discretion in its
14 certification of Nassau County's voting results.

15 Such actions were not void or illegal, and was done
16 with the proper exercise -- within the proper exercise of its
17 discretion upon adequate and reasonable public notice.

18 Further, this Court would further conclude and find
19 that the properly stated cause of action under
20 Section 102.168 of the Florida Statutes to contest a
21 statewide federal election, the Plaintiff would necessarily
22 have to place at issue and seek as a remedy with the
23 attendant burden of proof, a review and recount on all
24 ballots, and all of the counties in this state with respect
25 to the particular alleged irregularities or inaccuracies in

0013
1 the balloting or counting processes alleged to have occurred.

2 As recently stated by Judge Kline with the concurrence
3 of Chief Judge Warner in the Fourth District Court of Appeal
4 case, of Bedell v. Palm Beach Canvassing Board,
5 Section 102.168 provides in Subsection (1) that the
6 certification of elections may be contested for presidential
7 elections. Section 103.011 provides that, "The Department of
8 State shall certify as elected the presidential electors of
9 the candidates for President and Vice President who receive
10 the highest number of votes."

11 There is in this type of election, one statewide
12 election, and one certification. Palm Beach County did not
13 elect any person as a presidential elector, but, rather, the
14 election with the winner-take-all proposition, dependent on
15 the statewide vote.

16 Finally, for the purpose of expedition, due to the
17 exigencies surrounding these proceedings, this Court will
18 deny those portions of the pending motions to dismiss of the
19 various parties herein not affected by or ruled upon in these
20 findings and conclusions in those portions consisting solely
21 of matters of law being reviewable upon such denial.

22 In conclusion, the Court finds that the Plaintiff
23 failed to carry the requisite burden of proof, and the
24 judgment shall be hereby entered, and the Plaintiffs will
25 take nothing by this action. All ballots in the possession

0014

1 of the Clerk of this Court shall remain pending review. A
2 judgment will be entered and filed with the Clerk immediately
3 following the hearing.

4 (HEARING CONCLUDED AT 4:48 P.M.)
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1 , through 14, are a true and correct record of the aforesaid
proceedings.

0016
1 Certified Realtime Reporter
2 519 East Park Avenue
3 Tallahassee, Florida 32301
4 (850)222-5508
5 My Commission Expires March 20, 2001
6

7 CERTIFICATE OF NOTARY
8

9 STATE OF FLORIDA:
10 COUNTY OF LEON:
11

12 I, B. J. QUINN, Notary Public in and for the
13 State of Florida at Large, do hereby certify that the witness
14 personally appeared before me and was first duly sworn by me to
15 testify to the truth on the date and time indicated herein.
16

17 B. J. QUINN, RPR, CCR, CMR
18 Certified Realtime Reporter
19 519 East Park Avenue
20 Tallahassee, Florida 32301
21 (850) 222-5508.

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December 4, 2000
Plaintiff's Notice of Appeal

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
The Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, ET AL,

Defendants.

FILED
00 DEC -4 PM 4:37
DAVE LANG
CLERK CIRCUIT COURT
FOR COUNTY, FLORIDA
CASE NO. 00-208

PLAINTIFFS' NOTICE OF APPEAL

Plaintiffs, Albert Gore, Jr. and Joseph I. Lieberman, appeal to the First District Court of Appeal the order of this court rendered December, 4 2000. Florida Rule of Appellate Procedure 9.030(1) grants this court jurisdiction. A conformed copy of the order appealed is attached to this notice. The Order is a Final Order.

Respectfully submitted this 4 day of December 2000.



Mitchell W. Berger
Florida Bar No.: 311340
Berger Davis & Singerman
215 South Monroe Street, Suite 705
Tallahassee, Florida 32301
Telephone: 850/561-3010
Facsimile: 850/561-3013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 4 day of December 2000 to the following:

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for the Republican Party

R. Frank Myers
Messer Caparello & Self
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for Intervenor Named West Florida Voter

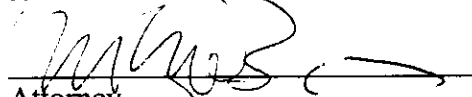
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Attorney


December 9, 2000

**Judge Terry Lewis' Transcript Instructions on Conducting
Recounts**

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

ALBERT GORE, JR., et al., CASE NO.00-2808

Plaintiffs,

VS.

KATHERINE HARRIS, as Secretary
of State, STATE OF FLORIDA, et al.,

Defendants.



IN RE: FLORIDA RECOUNT
GENERAL INSTRUCTIONS

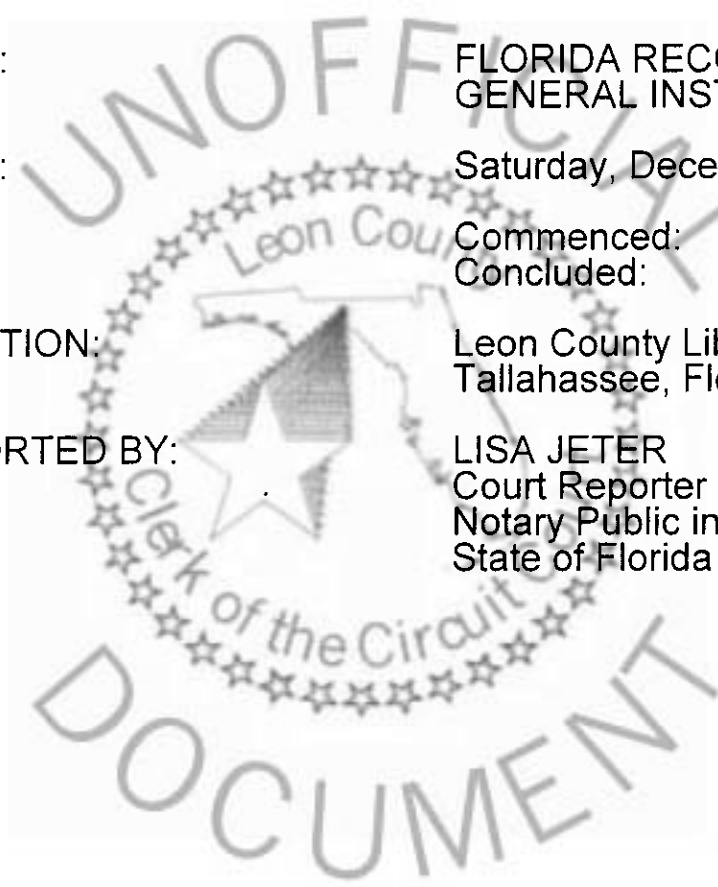
DATE: Saturday, December 9, 2000

TIME: Commenced: 9:55 a.m.
Concluded: 10:01 a.m.

LOCATION: Leon County Library
Tallahassee, Florida

REPORTED BY: LISA JETER
Court Reporter
Notary Public in and for the
State of Florida at Large

FILED
00 DEC 11 PM 1:50
CLERK OF THE CIRCUIT COURT
IN LEON COUNTY, FLORIDA



ASSOCIATED COURT REPORTERS

519 East Park Avenue • Tallahassee, Florida 32301 • (850) 222-5508

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GENERAL INSTRUCTIONS

MR. SANCHO: I am Ion Sancho, Leon County Supervisor of Elections, and ordered by the Supreme Court Order issued yesterday to provide technical assistance to the Circuit Court, which has jurisdiction in this case for the recount for the votes in the race for the presidential election that we had on November 7.

I'm going to briefly outline the procedures that we will be using here and some of the guidelines. At the end of that, we will be taking questions and swearing in some individuals so we can begin this process immediately.

We have four tables today. The counting tables, two members at each table. These counting members are Circuit Court Judges for Leon County, and we are honored that they could assist us in this endeavor.

Also present will be partisan observers, two at each table, and an official witness and counters from the Clerk of the Court staff that will assist in this process.

At each table there are five boxes for dividing the count into Bush, Gore, other, no vote, and disputed. In fact, in the Circuit Court, Judge Lewis determined that he will make the final decision on any disputes at issue here. He is in charge of this process.

We are going to be distributing ballots as determined by myself from the Dade County cartons, which are in the rear

1 of this room.

2 I would also at this time like to welcome Supervisor of
3 Elections, David Leahy, who I have been empowered by the
4 Supreme Court to appoint as an assistant in this process, and
5 he is my designee. And if you can't find me, you can find
6 him. He will be here all day.

7 Some basic ground rules: As these are paper ballots,
8 there can be no liquids on these tables. That would be akin
9 to having a sponge absorb any Cokes or coffees, and we cannot
10 have the ballots altered in this fashion. So I would ask
11 you, ladies and gentlemen, not to have coffee, Cokes, water,
12 anything at these tables that could actually affect these
13 ballots.

14 Secondly, for observers, Judge Lewis specifically
15 stated that observers in this room will act as observers.
16 There will be no verbal objections. Observers may take
17 written notes. If you have any comments to make, make them
18 in a written fashion. You may ask me at some point to
19 address anything that you have, but you may not make comments
20 while the counters are, in fact, counting, or the Judges are
21 counting the ballots. You are here strictly in an observing
22 fashion.

23 Secondly, because the Judge has stated that only notes
24 will taken of this procedure, no electronic recording devices
25 will be allowed at the counting tables, and no microphones on

1 the part of the media, the press will be allowed at the
2 counting tables either.

3 Also, partisan observers may stay in this room and the
4 hallway outside this room. But if you leave this room or the
5 hallway, leave the premises, you will not be allowed back.
6 You may trade off. You may take breaks. Those are the
7 ground rules for observers.

8 The process that is ordered by the Supreme Court
9 requires an expeditious count, and it is held under judicial
10 circumstances as opposed to the Chapter 102.166 Protest
11 Provisions which governed the Canvassing Board procedures in
12 the jurisdictions that occurred a couple weeks ago.

13 Again, I will be distributing the boxes which will be
14 assigned to the tables. I will be doing that on a basically
15 strict numerical basis, from the lowest number to highest
16 number. We will be counting only those undercounted ballots
17 that have not been counted yet by the Dade County Canvassing
18 Board.

19 The standard which will be used by the Judges will be
20 the standard enunciated about the Florida Supreme Court. The
21 Judges will be looking to discern the clear intent of the
22 voter.

23 It is my opinion that this is a common sense standard.
24 Actually, it is the same standard that was utilized by the
25 Dade County Canvassing Board in Miami-Dade. We will be using

1 that same standard, the clear intent of the voter.

2 Again, if two Judges cannot discern that, we have
3 provided a category for those ballots to be placed in, in
4 which the Judge will examine -- the Judge that I'm referring
5 to is Judge Terry Lewis. He will examine those ballots
6 himself for a final determination.

7 We will be issuing no partial numbers today. Hopefully
8 this process will be completed today. Judge Terry Lewis will
9 be issuing the numbers as he gets them, and it will be his
10 decision of when he will make those certified numbers to the
11 Secretary of State's office public.

12 Are there any questions that anyone here may wish to
13 address to me?

14 SPEAKER: When the ballots are brought to the table, I
15 assume that we will be told what the precinct number is of
16 the ballots being brought?

17 MR. SANCHO: The envelopes will have on them written
18 the precinct that they represent.

19 SPEAKER: And that will be announced, just to make sure
20 everyone at the tables knows what the precinct is?

21 MR. SANCHO: That's a good point. If the individual
22 transferring the envelope to the table, when they bring it to
23 the table, will simply read the number on the envelope so
24 that everyone will know what precinct we're dealing with.

25 SPEAKER: Will it be announced how many undervotes are

1 in that precinct? In other words, how many undervotes or how
2 many ballots are in the envelope that is being counted?

3 MR. SANCHO: That number is not written on -- that
4 number is also written on the envelope.

5 SPEAKER: And can that be announced as the envelopes
6 are being opened?

7 MR. SANCHO: First off, it may be announced, but, in
8 fact, we are going to verify it. One member of the team that
9 is sitting at the table as the counter will confirm the
10 number in the envelope.

11 SPEAKER: Since we're not objecting, the request that
12 I'm making is that this be done verbally so that we can at
13 least hear and see --

14 MR. SANCHO: That is perfectly amenable to me and a
15 fair request. So that counter or the individual transferring
16 the envelope, you will have two things to do: You will
17 announce the precincts and the number of ballots contained
18 within the envelope.

19 SPEAKER: Thank you. And one final request. It seems
20 as though I'm the only one here that has questions. Will
21 someone announce at the end of each precinct what the
22 results -- what the final breakdown is, so we can confirm it
23 with our notes? Maybe that's the position of the recording
24 clerk. X Bush votes, X Gore votes, X still undervotes?

25 MR. SANCHO: We will write that number on the envelope.

1 Each envelope that these -- Bush, Gore, other, no vote, and
2 disputed -- will have a number written on the envelope. As
3 they are written on the envelope, please announce what the
4 number is.

5 SPEAKER: Thank you.

6 MR. SANCHO: Chief Judge, are there suggestions that
7 you would like to issue at this point?

8 CHIEF JUDGE: No. Just administer the oath, and that
9 would be the next step.

10 MR. SANCHO: Thank you very much. I would like to ask
11 the clerk personnel who are assisting in this process --
12 there are a number of them in this room. If you would,
13 please stand. Some of you already are standing. Could you
14 raise your right hand. Repeat after me. I swear or affirm
15 that I will truly and faithfully carry out the duties
16 assigned to me by the Supervisor of Elections in performing
17 the vote recount as ordered by the Florida Supreme Court.
18 Thank you very much. The process may begin.

19 (UPON DIRECTION FROM THE LEON COUNTY
20 SUPERVISOR OF ELECTIONS, ION SANCHO, REPORTING OF
21 THIS MATTER WAS CONCLUDED AT 10:01 A.M.)
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, LISA JETER, Court Reporter and Notary Public in and
for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings was
taken before me at the time and place therein designated; that my
shorthand notes were thereafter transcribed, via computer, under
my supervision, and the foregoing pages numbered 1, through 8, are
a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee,
attorney, or counsel of any of the parties, nor relative or
employee of such attorney or counsel, or financially interested in
the foregoing action.

WITNESS MY HAND AND SEAL this, the 9th day of
DECEMBER, A.D., 2000, IN THE CITY OF TALLAHASSEE, COUNTY
OF LEON, STATE OF FLORIDA




LISA JETER
Court Reporter
519 East Park Avenue
Tallahassee, Florida 32301
(850)222-5508

ASSOCIATED COURT REPORTERS - 850-222-5508

December 9, 2000

Transcript of Hearing on Motions

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

ALBERT GORE, JR., et al.,
Plaintiffs,

CASE NO.00-2808

vs.
KATHERINE HARRIS, as Secretary
of State, STATE OF FLORIDA, et al.,

Defendants.



IN RE:

Motions Hearing

BEFORE:

HONORABLE TERRY LEWIS
Circuit Court Judge

DATE:

Friday, December 9, 2000

TIME:

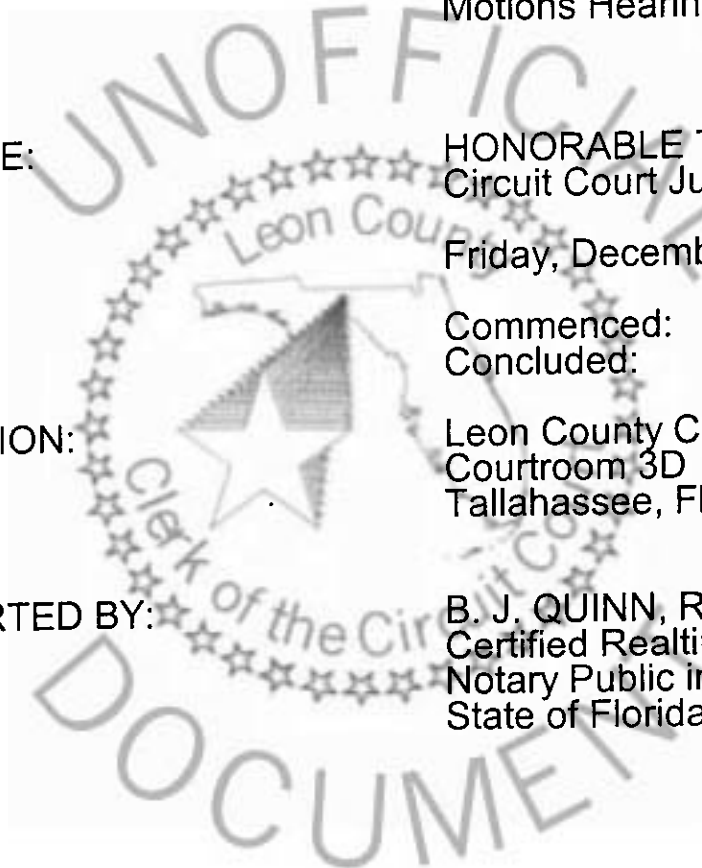
Commenced: 8:35 p.m.
Concluded: 11:39 p.m.

LOCATION:

Leon County Courthouse
Courtroom 3D
Tallahassee, Florida

REPORTED BY:

B. J. QUINN, RPR, CMR, CP
Certified Realtime Reporter
Notary Public in and for the
State of Florida at Large



FILED
00 DEC 1 AM 9:53
CLERK OF THE CIRCUIT COURT
TALLAHASSEE, FLORIDA

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* * * * *



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PROCEEDINGS

(REPORTING STARTED AFTER HEARING COMMENCED)

THE COURT: What's your Plan B?

MR. BECK: I think it would be good to reflect this over the evening, because I know you're going to need a Plan B, and I don't think you need to decide that tonight. What you need to decide tonight, is that people in the counties shouldn't be segregated in the ballots, in the way that makes our life more difficult.

In terms of what needs to be counted, we think that, first of all, the Supreme Court opinion sometimes talks about undervotes.

And by our count, through -- in the most recent machine run statewide, there are 64,780 undervotes.

Those are votes, those are ballots, where nobody punched through the chad for any presidential candidate. The Supreme Court elsewhere talks about counting all the nonvotes.

The nonvotes is a broader category. That also includes the ballots where people punched through for two candidates. There's 175,660 of those nonvotes. So we have to sort that through.

We think, also, that it is --

THE COURT: What does the Supreme Court say that I should do about nonvotes?

1 MR. BECK: I haven't been able to figure that out,
2 frankly, Your Honor. I just know they refer to nonvotes on
3 page 39. And nonvotes, to those who sat through the trial,
4 is a broader category. And those may have to be examined, as
5 well, to see if you can discern voter intent from the
6 nonvotes.

7 There are also, we have said in this litigation, if
8 you're going to start counting dimples as votes, then perhaps
9 you need to look at all the ballots, because if somebody
10 punched through successfully for George Bush, but then
11 dimpled one for Al Gore, then if that dimple counts as a vote
12 on the other ballots, it ought to count as a vote on all the
13 other ballots, and that would create an overvote situation.
14 So there's that problem, as well.

15 But focusing now on the undervotes, we think that you
16 need to look at all of the undervotes in Miami-Dade County,
17 including the 20 percent that were already looked at by the
18 Canvassing Board. And the reason for that, Your Honor, is
19 that it now becomes a judicial function to make sure that
20 they are all treated under the same standard using the same
21 factors.

22 We have a real serious problem in Miami-Dade County,
23 where we had a Canvassing Board that applied a very, very
24 loose approach of divining voter intent.

25 And they only went through 20 percent of the precincts,

1 and the 20 percent of the precincts happened to be
2 overwhelmingly Democratic. That's just the sequence they did
3 them in. Now, and they came up with a number of votes that
4 they divined, and Al he Gore picked up a whole bunch of
5 votes.

6 And, now, unless Your Honor looks at that, again, we're
7 going to start looking at the other 80 percent. And someone
8 is going to be using a different approach that was used for
9 the 20 percent that's heavily Democratic.

10 The remaning 80 percent, according to the regular votes
11 that came in was actually 52 percent Bush, 48 percent Gore.

12 So if someone was going to use a real meaningful
13 standard for the Republican parts of that county, then those
14 voters, including a lot of Hispanic voters, who tended to
15 vote Republican in this last election, are going to have
16 their votes evaluated under a standard that's different than
17 was used for the Democrats.

18 That creates big problems under the Voting Rights Act
19 for a protected group, like Hispanic Americans, the equal
20 protection clause for everybody, as well as 3 US Code
21 Section (5).

22 So we believe that the Court is required to include
23 that 20 percent of the Miami votes so that all the votes are
24 counted in the same way.

25 We also believe that Broward, which underwent a manual

1 recount, those votes also need to be examined by whoever the
2 Court determines should do the examining, using the factors
3 that the Court identifies as appropriate.

4 What we had in Broward was testimony in this record
5 that they used different standards at different times during
6 the manual counts, and that the standards were much, much
7 looser than, say, the ones that were attempted to be applied
8 in Palm Beach.

9 So Broward was a very heavily Democratic county, voted
10 heavily for Al Gore. It picks up hundreds of votes in this
11 process in the Canvassing Board, and uses a standard that was
12 not used in Palm Beach, which I believe is not going to be
13 the one that Your Honor sets for the rest of the state.

14 So we think that the Broward votes have to be
15 reevaluated, using the same factors that Your Honor, we
16 think, will have to be identifying for the rest of the state.
17 Otherwise we've got the same problems identified before.
18 Different people's votes are treated differently, depending
19 on where they live. And whether their Canvassing Board is
20 all Democrats or has a mix.

21 So it's my big concern about consistent standards. And
22 then, also, Judge, less controversially, I believe, we got a
23 ruling today from Pensacola concerning Overseas ballots, the
24 Military ballots, that the Democrats had initially succeeded
25 in including. And now the Overseas and Military people

1 should have their votes counted even though they don't have a
2 postmark on the ballot. We'll be giving Your Honor a copy of
3 the opinion.

4 I haven't seen it, yet, but I understand it was
5 favorable to the overseas voters. So those votes will have
6 to be included in the tally, as well.

7 We believe that as to where it should be counted,
8 consistent with our position, that the Court should be doing
9 the counting, or at least under the direct supervision of
10 Your Honor, if you're going to use personnel here, that the
11 votes ought to be shipped up here.

12 We also believe, lastly, on the procedures that, the
13 counting ought to be done in the Sunshine, with observers
14 from each side present. These are going to be factual
15 determinations that are going to be made by somebody under
16 the auspices of the Court. And there are go to be disputes
17 like there were in front of the Canvassing Boards, over
18 whether this stray mark is a vote for Al Gore, or whether it
19 isn't a vote for Al Gore, and we're going to have to be heard
20 on that. So we're going to have to have some mechanism,
21 where we can have observers present, both sides, obviously.

22 And we believe that, under Florida law, since this is,
23 essentially, a taking of evidence and an examination of
24 evidence in Court, that needs to be done in the Sunshine.

25 Now, Your Honor --

1 THE COURT: Tell me some specifics on that. How many
2 people? What would they do?

3 MR. BECK: I guess, Your Honor, I don't know, yet, what
4 Your Honor is going to order in terms of who is going to be
5 counting these votes. But I think we basically need to have,
6 for each person or group of people who are counting a set of
7 ballots.

8 I think we need one observer from each side, who has
9 the opportunity to be heard. And we need this transcribed so
10 that, ballot by ballot, if there are disputes, those can be
11 resolved.

12 It may be that Your Honor, takes an approach of
13 allowing others to do the first cut. And then disputed
14 ballots, you'll examine yourself.

15 But if you're going to do that, I think we're going to
16 need a record so that Your Honor can name this evaluation.
17 And even if Your Honor, decides: I'm not going to look at
18 any ballots, we still need a record, because we're still
19 entitled to appeal.

20 And I don't think that the Supreme Court created a
21 whole new mechanism where not only do we have new people
22 doing a manual recount, but it's conclusive that we're not
23 allowed, even though it's done in the course of a lawsuit, to
24 ever have an appeal or that.

25 So we're going to need to have court reporters

1 transcribing objections and arguments and records being kept,
2 of which ballots are in dispute. So you can resolved that,
3 or some other judge, or some other Court, can resolve it.

4 On the question of standards, Your Honor, I guess what
5 I'll do, since I don't know exactly how comprehensive Your
6 Honor's order is going to be tonight I'd like to give you a
7 preview of what our position is, with the caveat that, since
8 we didn't know Judge Sauls was going to be recusing himself,
9 I didn't come ready with a two-hour evidentiary presentation.
10 But let me tell you what I think the evidence showed in this
11 case concerning standards.

12 THE COURT: I want to hear from Mr. Douglass and you.
13 And it's ten of nine. And I may want to come back and hear
14 some evidence on it, but, really, based upon what you heard,
15 and the evidence, what criteria should be applied, in your
16 mind?

17 MR. BECK: That's what I'll say, without getting into
18 the evidentiary discussion. I apologize, but we have to say
19 that, both from a legal point of view as well as a factual
20 point of view, we think the criteria are: If you
21 successfully punch the chad through all the way, or if you
22 dislodge the chad partially. So that it's what is so-called
23 a hanging chad. I trust Your Honor has sort of seen enough
24 in the newspapers to know what a hanging chad is.

25 THE COURT: Yes, sir.

1 MR. BECK: But that is a fair indication of voter
2 intent. We think the standard ought to be that a dimple or
3 indentation is not something from which you can discern voter
4 intent. Now, Judge, I want to go to the next step, to
5 Plan B.

6 If Your Honor decides that you're going to articulate a
7 standard, whether people are going to take into account
8 dimples and indentations, here is what I think the factors
9 are: Number one, the indentation has to come in a stylus,
10 not from a fingernail or a finger.

11 And believe it or not, we had evidence, Your Honor, you
12 can tell when it comes from a stylus, and when it's just
13 other some stray marking. When it comes from a stylus, it
14 leaves, basically a fingerprint of a stylus. There will be a
15 circular dimple that is the same diameter of the stylus, and
16 you can tell.

17 So, number one, the only dimples that ought to even be
18 considered, is if they come from a stylus.

19 Number two is, the stray or so-called rogue dimple;
20 that is, where there's a dimple next to George Bush's name,
21 or Al Gore's name, but the voter managed to successfully vote
22 in the rest of the races, that that is not an indication of
23 voter intent. And it is, in fact, at least as consistent and
24 more consistent with the hypothesis that the voter chose to
25 affirmatively not to vote for Al Gore or George Bush.

1 We only heard from one voter. He put his stylus in, he
2 thought about it, searched his soul and brought it out. So
3 that's a man who chose not to vote. If you count that as a
4 vote, you disenfranchise that man.

5 He's got a right not to vote for either one, we all
6 love our candidates. But I read in the paper there are a lot
7 of people who are not as crazy about either one of them, so
8 they chose not to vote.

9 So a stray or rogue dimple is not a vote. And that
10 simply is pretty consistently the rule throughout the
11 country. And I hope tomorrow to have an opportunity to
12 present you with the law, as well as the facts on this.

13 Now, we also did hear evidence from our expert, as well
14 as theirs that, occasionally what happens is people don't
15 insert the ballot in what's called a throat. Instead they
16 put it on top of the device, and then they are never able to
17 punch the chads through.

18 But both experts said, in that event, you'll see a
19 pattern of dimpled chads. Because there's nothing magic
20 about Al Gore, all the way down the ballot they will have
21 failed to punch the chad through, or in almost all of the
22 races.

23 So we believe that if you're going to be looking at
24 dimples, which you should not do, that you should only count
25 the dimples where there is a pattern of clear attempts, but

1 failures to punch the chad through.

2 That is the kind of standard that was attempted to be
3 applied in Palm Beach County to varying degrees of success at
4 different times. It's the kind of standard that was applied
5 in the Illinois case, and in the Pullen case, and it's also
6 the kind of standard embodied in some regulations from around
7 the country.

8 We think dimples shouldn't count. But if you're going
9 to count them, that's a fair indication of voter intent, that
10 the rogue dimples ought not to be counted.

11 And one thing we feel very strongly about, Your Honor,
12 what happened in Broward County was just awful. They said:
13 This person voted for a whole bunch of Democrats; and,
14 therefore, I can read his mind and tell that indentation next
15 to "Al Gore" was really a vote for Al Gore.

16 We feel like trying to read his mind based on what he
17 did in other races is really improper. Because at the
18 presidential race; in particular, people decide not to vote
19 for the head of the ticket or they switch parties, or cross
20 other parties, because they often vote for the man, and the
21 future of the woman, rather than the party. And they have
22 second thoughts, and they often say: I'm a loyal Democrat,
23 but I can't stomach Al Gore. Or, I'm a local Republican, but
24 don't like George Bush. But when you describe intent based
25 on what they did in other races, you disenfranchise those

1 people and water down all the votes of other people in
2 Florida.

3 So that's my shorthand version of what we think the
4 factors would be. And we hope Your Honor would give us an
5 opportunity to summarize the evidence on it, because there
6 was quite a lot of evidence in the trial record on this.

7 THE COURT: When do you envision in your procedure that
8 actual counts would begin?

9 MR. BECK: Well, I think that they ought to begin -- I
10 assume Your Honor wants to move forward expeditiously and not
11 on a leisurely basis. So I think people ought to be working
12 on the weekends here, and I think that the counties ought to
13 be reporting to the Court on their success in segregating the
14 undervotes, and ought to be reporting to the Court the
15 numbers, so that we have it in the record here of the new
16 tabulation, whatever this may be used for in the future, of
17 Gore votes, Bush votes, all the other candidates, and the
18 number of undervotes.

19 And then once those are segregated, you know, when it
20 should begin, I'm assuming Your Honor is not going to take me
21 up on my suggestion that they all get shipped down to your
22 courtroom and you look at them all.

23 So I think, then, we're talking about, you know,
24 the day after that.

25 But I don't know who Your Honor is going to decide

1 should look at these votes.

2 THE COURT: Whoever, that is.

3 MR. BECK: Whoever looks at them, I think ought to be
4 looking at them. Basically, as soon as the Court is
5 satisfied they've segregated these in a proper way and
6 recorded the tabulations in a proper way, and as soon as we
7 can get a court reporter and observers from either side
8 there.

9 So I'm anticipating that some counties may be able to
10 do that process, and conceivably start, you know, tomorrow
11 afternoon. I don't know if they can get it done that fast or
12 not.

13 We also have a whole issue of -- I think the Supreme
14 Court ordered that every county, including the ones that use
15 optical scanners, have to go through this process:

16 And I'll tell you, I haven't given a moment's thought
17 to what an undervote is, what the implication is in an
18 optical scanning county.

19 We need to talk to the Court about that. There are
20 some counties with very view undervotes. And it may be an
21 easier task. So the short answer is: As soon as Your Honor
22 has been satisfied that they've been properly segregated and
23 tabulated, and we can get observers there, then I think the
24 counting would begin.

25 Now, let me also say that we actually intend to seek a

1 stay of this entire matter from the Florida Supreme Court and
2 the United States Supreme Court, because I think that it
3 can't possibly result in anything that's actually meaningful
4 and helpful. And all it's go to do is create constitutional
5 difficulty.

6 So, but in the meantime, we want to be cooperative with
7 the Supreme Court. So that's what I think ought to be done.

8 We're just now thinking about who are we going to draft
9 to be observers. I don't know whether it's true. My wife
10 told me that she was watching television before I came over
11 here, and that she heard that the Democrats had chartered a
12 plane and were flying in 100 lawyers from Washington to act
13 as observers.

14 So I suppose we'll have to round up volunteers on our
15 side. I don't have a toll free number to call. But we're
16 going to have to get volunteers on our side, as well, lawyers
17 who are going to be with each one of these counters, lodging
18 objections and making arguments.

19 THE COURT: Anything else?

20 MR. BECK: No, Your Honor.

21 MR. KLOCK: Your Honor, we have objections to what the
22 Republicans are suggesting.

23 THE COURT: The Republicans are suggesting -- I'd like
24 the objections, but I'd rather focus on the positive. You
25 tell me what you want to do.

1 MR. KLOCK: If I can explain why. I don't mean to be
2 mean or problematical. But you have the desirable position
3 of not only reporting to the Supreme Court of Florida, but
4 also having the Eleventh Circuit Court of Appeals and the
5 United States Supreme Court watching what is going on, having
6 orders simultaneously filed in Washington and Atlanta.

7 Our concern is to preserve the record for a review
8 before the Eleventh Circuit Court of Appeals and also the
9 United States Supreme Court.

10 And, Your Honor, I'll understand if you don't want to
11 hear it, and we'll just file it in writing. But one thing
12 I'd like to start out with that's problematical, if you turn
13 to page 38 of the slip of the Supreme Court, they say:
14 "Moreover, because the venue of an election contest that
15 covers more than county, lies in Leon County, the Circuit
16 Court has jurisdiction, as part of the relief it ordered,"
17 presumably, "to order the Supervisor of Elections and the
18 Canvassing Boards, as well as the other necessary public
19 officials in all counties that have not conducted a manual
20 recount or tabulation of the undervotes in this election, to
21 do so forthwith. Said tabulation is to take place in the
22 individual counties where the ballots are located." That's
23 what they ordered you to do.

24 You'll recall the argument put forth before that
25 indicated that the only provision for a manual recount

1 provides for three people that are designated by office.

2 And, Your Honor, the identity of those people are very
3 important, because, for instance, in Dade County, the
4 supervisor of elections, who is one of the three, is a
5 registered Independent.

6 If you look down here further, after the Supreme Court
7 has said that you're supposed to do it in the county where
8 the votes were cast, they then go on, on page 39, to suggest
9 that, because time is of the essence, the Circuit Court with
10 respect to the Miami-Dade ballots is to go forward and be
11 assisted by the Leon County Supervisor of Elections, or its
12 sworn designees, directly contradictory to the paragraph
13 before. And it's my understanding -- I've never met the
14 man -- that he is an elected official who ran as a Democrat.

15 Now, Your Honor, if you look at the transcript when you
16 have the opportunity to look through, you'll find that the
17 number of votes that are generated through this divining
18 process seems to be tied not only to the number of registered
19 voters of each party in the county, but also who is looking
20 at it.

21 So our view would be, and we would reiterate and
22 respectfully disagree with our colleagues that are
23 representing the Republicans, that it must be done by the
24 Canvassing Boards, the standards have to be established by
25 the Canvassing Boards there.

1 And if the Court is going to overlook that, that's
2 fine. But it can't be done the way that it's being suggested
3 that it be done. That would be improper with the statutes.
4 Now, we have a number of objections I'd be happy to go into,
5 but --

6 THE COURT: The positive thing that you suggest I do is
7 have the Canvassing Boards in the county do the manual
8 recount?

9 MR. KLOK: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. KLOCK: And then, Your Honor, also with respect to,
12 you know, certain other points that we can raise, we can do
13 it now or later. But the Secretary -- the Division of
14 Elections has issued two advisories to the supervisors. And
15 I'll pass one up to the Court, if I may, and pass one around
16 here, with the Court's approval.

17 And, Your Honor, what our hope is, is we have advised
18 the supervisor of elections they should watch TV so if there
19 is anything that is ordered from the bench, that it can be
20 immediately implemented.

21 But, Your Honor there is going to have to be a need to
22 deal with those issues. I assume these people are going to
23 comply without being served. But you never know. And that's
24 something that the Court has to consider, as well.

25 Another point the Court has to consider is that, you

1 know, this process has now extended -- the protest/contest
2 period, which apparently ran together -- for a longer period
3 of time. And when, Judge, is to be the appellate review of
4 this process if everything has to be done by midnight on the
5 12th?

6 So Your Honor also has to give some thought to a cutoff
7 point. And as has been argued before also under the
8 statutes, if you don't have a complete count done, it is not
9 fair to include them.

10 And, Your Honor, I would, again, refer back to the
11 testimony that was taken at the trial, where they
12 demonstrated in Miami-Dade County, where the numbering of the
13 precincts starts with one, not surprisingly, starts over by
14 the coast, that heavily Democratic precincts with over an
15 80 percent Democratic content were counted in the first 135
16 that they did where they stopped, and then the rest of the
17 county went 53 percent, as opposed to a higher number, I
18 believe 53 percent for Governor Bush.

19 So, consequently, if you don't do the entire county,
20 again, you're skewing the votes. So you do have to
21 respectfully figure out a way to have all of these people in
22 all of these counties get everything done. So it's either
23 everything or nothing. And we'd also suggest that the whole
24 state has to be done, or they can't be permitted. There is a
25 statutory provision that says you can't have partial

1 recounts.

2 THE COURT: When you say, "all the votes," are you
3 talking about all of the votes, or all of the undervotes?

4 MR. KLOCK: Our position is all of the votes, that's
5 plan A, which Your Honor has indicated you don't have a great
6 deal of affection for.

7 THE COURT: Plan A was that I personally look at
8 everything.

9 MR. KLOCK: This was a modified plan A. This is more
10 attractive. But the fact is, again, all the votes have to be
11 looked at, because the overvotes are just as significant as
12 the undervotes, because as you go through the process, if the
13 chads flip this way, they can flip that way.

14 THE COURT: I'm going by a very narrow thing, and what
15 the Supreme Court told me to do is what would be done.

16 MR. KLOCK: I'll be happy to put all of our objections
17 in writing, I just don't want the Court to claim its
18 sandbagged later on if these objections are raised.

19 Finally, with respect to the standard, with respect to
20 what Mr. Beck raised, the only testimony -- they had an
21 expert that the Democrats put on. He was asked the following
22 several questions. He was asked: If you pick up a ballot
23 and you go to the presidential race, and you see a hole
24 punched through all the way, and you see a dimple below it,
25 and another candidate, how do you read that? And he said,

1 well, there's no question. The dimple is a mistake, and the
2 punch-through is correct.

3 The next question: Well, if you pick up a ballot, and
4 there is only a dimple, and he said: Well, if it's only a
5 dimple, you count that as a vote.

6 Now, how Your Honor, something that is a mistake in one
7 instance, then becomes not a mistake in another instance, I
8 think points to the fact that anything having to do with a
9 dimple should be immediately suspect, especially since we
10 don't have any standards.

11 And I don't understand how you can have a standard if
12 something is or is not a mistake or a vote, depending on what
13 you want to do, which gets us back, again, Your Honor, to the
14 Canvassing Boards that have to make these determinations. I
15 guess with some sort of Court supervision.

16 And if Your Honor wants, we'll put other objections
17 into writing and file them in the morning. We want them in
18 the record, and we want Your Honor to be able to look at
19 them.

20 And, in addition, I would ask, with respect to what one
21 of the appellate courts is looking at, that is the
22 Eleventh Circuit Court of Appeals, we want to pass up a copy
23 of the Touchtone decision, and its dissent. And particularly
24 call Your Honor's attention to the dissent of
25 Judge Cholak (phonetic) for Your Honor to look at.

1 I had asked for copies of each of the opinions to be
2 brough over, and, apparently they brought over twice as many
3 of one.

4 I'll also hand up the Seagull opinion. And the other
5 objections, we'll file in writing.

6 THE COURT: And I appreciate that many of you may have
7 objections to what needs to be done. My only concern is I'm
8 going to try to do what's been directed. I fully expect you
9 to make your objections on the record.

10 But if we have to of the this done, what's the best way
11 to do it?

12 Finally, also, I was just handed this. This is an
13 order of the United States District Judge for the Northern
14 District of Florida which commands that Military ballots that
15 are, as the language says -- if I can read this from the
16 ordering clause: "Accordingly the Court hereby orders any
17 state statute, regulation administrative rule, or procedure,
18 that rejects a federal write-in ballot which has been signed
19 pursuant to the oath provided therein, (a), solely because
20 the ballot envelope does not have an APO, FPO or foreign,
21 postmark; or, (b), solely because there was no need for an
22 application for a state absentee ballot, conflicts with
23 federal law. It is further odered that all federal write-in
24 ballots objected to for the above-stated reasons, are
25 declared valid, this 8th day of December, 2000, by Judge

1 Leahy Collier (phonetic), United States District Court,
2 which, of course, is binding upon the Secretary of the
3 Canvassing Commission. So we'll be in that process, as well,
4 Your Honor.

5 MR. BECK: Your Honor, there were a couple of points
6 that I either didn't make, or didn't make clear, but I'll at
7 least make them short.

8 The first one is that on the question of whether there
9 was a statewide standard as to not counting dimples and
10 indentations, there was, we believe, a statewide standard in
11 practice, in effect, which was to count, fully dislodged
12 chads, only, and that the Palm Beach regulation was a
13 recognition of that.

14 It's not so much that the Palm Beach regulation governs
15 statewide, but it is a reflection of the fact that,
16 statewide, that was the practice and standard.

17 So if this Court now articulates a standard that allows
18 dimples and indentations to be counted, that will be a new
19 and different approach and standard than was in place in the
20 Court -- in the state, although not written up in the state
21 regulations; and, therefore, would violate 3 US Code
22 Section 5.

23 THE COURT: When you say at statewide standard, where
24 did it come from?

25 MR. BECK: I think where it came from is probably the

1 instructions that came with the machine, and the instructions
2 that came from the manufacturer, and that the way that votes
3 are tallied, using the Votomatic machine is that somebody
4 dislodges the chad fully, then the light shines through and
5 it counts as a vote for Al Gore or for George Bush.

6 And no one has ever, previous to this in Florida,
7 counted ballots any other way. No one had ever, previous to
8 this, using Votomatic ballots, ever used the standard of
9 indentations or anything else. So it was a machine count of
10 the ballots with fully dislodged chads. And to do something
11 other than that is a new and different standard, is your our
12 position on that.

13 Secondly Your Honor --

14 THE COURT: It's sort of like a common usage, or common
15 practice, as opposed to some standard proposed?

16 MR. BECK: It was not a legislatively -- it was not
17 written in the statute, but it was -- when the officials who
18 determined how votes were to be counted and tabulated brought
19 the Votomatic machines, and followed the instructions from
20 the Votomatic manufacturer, and put the instructions on the
21 back of the voting booth, telling the voters what counts as a
22 vote, and having the instructions in the ballots.

23 And what the instructions in the ballots say, and on
24 the back of the voting booth say, is that in order to vote,
25 you must fully dislodge the chad.

1 And it says that, if I haven't fully dislodged the chad
2 you have to pull it off. So there, in fact, were written
3 standards in the form of the instructions that were at the
4 polling place on the wall, and in the back of the booth. We
5 saw it on television. I don't know if you were paying
6 attention to that part of the testimony.

7 And is written on the ballots, themselves. So the
8 voters are instructed in language adopted by all the local
9 officials across the state who use these machines.

10 So the standard is in writing, adopted by the local
11 boards and given to the voters. So we do believe we have
12 written standards that say: To vote, you dislodge the chad
13 completely, otherwise it's not going to count as a vote.

14 So now to change that, we think would be a change in
15 the law and, in effect, in the written standards, which would
16 violate the federal statutes.

17 And we can elaborate on that tomorrow, if you want.

18 Then lastly, Judge, whatever procedure you adopt, and
19 whomever you delegate the task to of reviewing the ballots,
20 in the first instance, we think that for all challenged
21 ballots, those should be segregated further, identified by
22 number in some way, a record kept of the objections, and the
23 arguments made, and those should come to Your Honor from
24 around the state.

25 I don't know how many there's going to be, but they --

1 I think if the standards are articulated clearly enough, I
2 don't think there's going to be very many nonvotes that are
3 transformed into votes. If, in fact, the factors are
4 identified correctly, there's very few people who put the
5 ballot on top of the machine and leave a pattern, because
6 they don't follow the instructions.

7 So it's not going to be that big an issue, I don't
8 think, if the factors are clearly articulated.

9 But whatever they are, we think that disputes need to
10 be resolved, in the last analysis, by this Court, rather than
11 by your -- whoever you delegate the initial counting to,
12 because the Canvassing Boards are not given any discretion in
13 the contest. They're not mentioned in the contest.

14 And if the Supreme Court has decided to order, or to
15 suggest to Your Honor that you can enlist their aid, we think
16 that's a mistake. We think it creates horrible
17 constitutional problems. But if you go down that road, then
18 at the very least, there has to be some judicial review of
19 these determinations that are being made by nonjudicial
20 officers.

21 So we hope all of the challenged ballots will be
22 bundled up, segregated, brought here to Tallahassee, and then
23 we can have a hearing and go through them.

24 THE COURT: Mr. Myers? I'll give everybody a chance.

25 MR. MYERS: May it please the Court, as you may not be

1 aware, I represented West Florida Intervenor in this action.
2 Early on in this litigation we had asked the Court to do a
3 statewide manual recount and asked the Court to take a
4 statewide perspective.

5 If the Court looks at page 38 of the Florida Supreme
6 Court's decision, you'll see the Florida Supreme Court has
7 agreed with the Intervenor's position that a statewide count
8 should been done. So presumably they agreed with some of the
9 positions we presented.

10 I wanted to answer Your Honor's question about votes
11 that are no votes, or not undervotes, in other words, the
12 overvotes, and perhaps the Military ballots, or any other
13 absentee ballots.

14 I took some time to look through the Florida Supreme
15 Court's order, Your Honor, to determine whether you should be
16 ordering a recount of those.

17 If the Court looks at page 39, you'll see that the
18 Florida Supreme Court has directed you to enter such orders
19 as are necessary to add any legal votes to the total
20 statewide certifications, any legal votes, Your Honor.

21 And if you look back, you'll see on page 16 of that
22 decision that the Florida Supreme Court also agreed, it says,
23 "We do agree that a manual recount be conducted for all legal
24 votes in this state."

25 Furthermore, the Court further discusses the need for

1 looking at all legal votes in the State so that every vote
2 that should have been counted is counted for purposes of this
3 manual recount.

4 On page 11, the Court goes on to say, about halfway
5 through the page, Your Honor: "The right to a correct
6 count" --

7 THE COURT: What page?

8 MR. MYERS: Page 11, it's a quotation, as well
9 established in this state by our contest statute. "The right
10 to a correct count of the ballots in an election is a
11 substantial right, which is the privilege of every candidate
12 for office to insist on. In every case where there has been
13 a failure to make a proper count, called tally, or return of
14 the votes as required by law," and this fact has been duly
15 established as the basis for granting such relief, a correct
16 count of all the ballots, Your Honor, is one of the things
17 the Supreme Court has pointed out to you.

18 And if you look at page 19, about two-thirds of the way
19 down, over toward the right, you'll see it says, "The clear
20 message from this legislative policy is that every citizen's
21 vote be counted whenever possible."

22 So I think it's clear, Your Honor, that from the
23 Florida Supreme Court's decision today, that as a floor or a
24 minimum threshold for Your Honor, you must order a recount
25 all of the undervotes.

1 However, the Court has broadly ordered you to include
2 any legal vote that the Court feels would be there, and also
3 to ensure that every legal vote be counted so that every
4 citizen's vote would count in the State of Florida.

5 I think it's pretty clear that the Court has the
6 authority to do that here, and that would include absentee
7 ballots, and would exclude the overvotes or no votes that had
8 been registered. I'll represent to the Court that --

9 THE COURT: Can I stop you for a second? Do you
10 consider overvotes and no votes or nonvotes the same thing?

11 MR. MYERS: Not necessarily, no, I don't. A no vote
12 would be, for example, the counties reported, and it's part
13 of the record in this case, that the State Elections
14 Commission received a report that there were over 180,000 no
15 votes. And those no votes would include undervotes and
16 overvotes. So the no votes is a more, a broader concept.

17 THE COURT: So no votes include both undervotes and
18 overvotes?

19 MR. MYERS: From my understanding, yes, Your Honor. I
20 also point out to the Court that we heard testimony from
21 Judge Burton in this particular trial. We learned that there
22 is now an art to manually recounting the votes. It was
23 readily apparent that he had picked up this art from
24 obviously spending hours and hours from looking at these
25 ballots.

1 I recommend to the Court that you, at least, at part of
2 the hearing here look at some of the ballots by hand, so you
3 can begin to understand some of the these that you would need
4 to convey to the rest of the boards.

5 Also, Your Honor, if you would be so inclined to review
6 the testimony of Judge Burton or others who actually went
7 through a manual recount, you'll be able to pick up some of
8 the standards that Mr. Beck was talking about earlier. So I
9 recommend the Court do that.

10 Notice, you asked Mr. Beck about when and where. First
11 of all, it's clear that the Florida Supreme Court intended
12 that the votes be done in the counties in which they were
13 cast, with the exception of those votes that are right here
14 in Leon County.

15 We recommend to the Court that, at the earliest, the
16 Court ordered the manual recounts to begin at noon tomorrow
17 on Saturday. That would be sufficient notice for the public
18 to go to the locations of the manual recounts so they could
19 witness this, and also give sufficient time for the observers
20 who want to be there, to be at the various locations
21 throughout the state.

22 Any earlier than that, Your Honor, would deprive the
23 public of proper notice to watch this proceeding.

24 I also recommend to the Court that you have a time
25 certain for reporting the results of these manual recounts so

1 that we can meet our -- the deadline that we have on
2 December 12th. I would recommend that noon on Monday the
3 11th, would be an appropriate time to stop the manual recount
4 and report.

5 The reason I say that, Your Honor, is it will take time
6 to tabulate the results. And the Court must also consider
7 who do they report? To the Court? Well, who in the Court?

8 And they need to understand that, because the Court
9 administrator may not be able to physically receive 67 faxes,
10 or I guess it would be more like 63 faxes from the various
11 counties at five o'clock on Monday afternoon, in order to
12 begin tabulating results?

13 Then, of course, as Your Honor knows, once the counties
14 report, there has to be a tabulation of the statewide count
15 and there need to be time for that to be done. That's why I
16 recommended noon on Monday, at the latest, so that these
17 results can be done.

18 I also agree with the concept that you have to look at
19 all of the votes, or at least run all of the votes through
20 the machines, in order to identify the no votes that have to
21 be looked at by hand.

22 I recognize that there's not enough time in the next
23 two days count 6,000,000 votes in the State of Florida.

24 However, running those through the machines will
25 eliminate the problems Mr. Beck identified, and that is every

1 time they're run through the machine, additional no votes are
2 identified. So we have to make sure we get an accurate
3 count. And that's of utmost importance to the voters in the
4 State of Florida.

5 THE COURT: Let me ask you this: Every time you run it
6 through the machine, you get a different count. Well, why
7 would the count you do next time be any different than the
8 one you already have?

9 MR. MYERS: The point is, if they have already run them
10 through the machine and they already have their counts that
11 they've certified -- and they've done it twice, we know --
12 then they may not be able to identify which of those votes
13 had registered as no votes, without running them through the
14 machine, again. If Your Honor orders them to only count the
15 no votes, and they haven't segregated them, and we don't know
16 that they have, then you have basically crippled that
17 Canvassing Board from doing their job, and they're going to
18 have a difficult time.

19 However, if you order every Canvassing Board to run
20 them through, again, you ensure that everyone starts with the
21 same ground zero approach, and that is that we make sure we
22 separate the no votes away. And that way we're much more
23 likely to have an accurate count come in from the Canvassing
24 Boards once they report.

25 I also agree with Mr. Beck that you have to have

1 objective standards, Your Honor. And that's why I suggest you
2 take a look at the votes. But Your Honor needs to tell statewide
3 what those standards would be, so, again, the count is done with
4 the same standard statewide.

5 And who will vote? I recommend to Your Honor that the
6 people who vote are people who are experienced with handling these
7 ballots.

8 Obviously, the Canvassing Boards are the best
9 candidates; however, some of the Canvassing Boards will not have
10 an opportunity to have just those three people that are members of
11 the board do the count in some of the counties that have a large
12 number.

13 So Your Honor has to consider how can they delegate to
14 people that necessarily may not have any experience.

15 Let me give you an example: Let's say that
16 Hillsborough County has to manually recount all of their
17 undervotes this weekend. Well, up to now, to my knowledge,
18 they've not had to do any manual recounts, so they haven't trained
19 anybody up to now to know how to do a manual recount. And only
20 the three members of the Canvassing Board are experienced with --
21 and their staff -- are experienced with handling the ballots
22 themselves.

23 So the Court needs to give some direction to the
24 Canvassing Boards, especially in the more populous counties, on
25 how they are to delegate, if at all, to those members who would be

1 working for them, and what kind of training that they need to give
2 them, in order to have this manual recount done within the two-day
3 time period.

4 And I suggest to Your Honor, by giving a time certain
5 that they have to report the results, and telling them how they
6 must report the results will, of course, help them establish how
7 fast they have to go through this process, how many people that
8 they will need, and how they would go about it to meet the
9 deadline.

10 Now it, there are some concerns about how to ascertain
11 the Palm Beach County undervotes and overvotes or no votes. And
12 I'm not sure that that's been handled by the Palm Beach County
13 personnel.

14 However, Your Honor has to address the fact that those
15 ballots were all shipped up here from both Miami-Dade County and
16 Palm Beach County, and that they went necessarily segregated.

17 As I recall during last week, they began to separate
18 some of the ballots from each other, and they were ordered by
19 Judge Sauls to stop the separation and just pack them all up and
20 send them up here. And they were doing some sort of separation
21 down in Miami-Dade County, as I recall, or maybe
22 Palm Beach County.

23 So Your Honor has to get some instruction for the
24 personnel here in Tallahassee, on how the votes have been packaged
25 in Miami-Dade County and Palm Beach County so that the personnel

1 up here have to figure out how they're go to do it.

2 And let me point this out to Your Honor : I don't
3 believe Leon County has the machines to run the Miami-Dade County
4 and Palm Beach County ballots through the machines to separate
5 them. So that's a concern, because I know when we vote, we use
6 the optical scanners here in Leon County.

7 If that's a concern, then the Court has to address
8 that, as well, is how are we going to have a machine separate them
9 when we don't have a machine here in Leon County that can actually
10 run those ballots through.

11 And that may be that we have to have someone from
12 Palm Beach County or Miami-Dade County to fly a couple of machines
13 up here first thing in the morning so the Court can have the no
14 votes separated from the rest of the ballots, so they can get
15 started on the manual recount.

16 So those are all the concerns that we have. And from
17 the point of view of voters in west Florida, we just ask that you
18 keep in mind that the voters are the real parties in interest here
19 in this particular case, and that we're trying to be protect the
20 will of all of the voters of the entire State of Florida in
21 whatever standards you give everyone. Thank you.

22 THE COURT: Thank you.

23 MR. DOUGLASS: Your Honor, just a short remark. Number
24 one, what I'd like to ask the Court to consider, is that when
25 we have these types of presentations, that we impose some

1 time standard in the matter. In the Supreme Court, for
2 example, you've got so much per side. And you had to divide
3 it.

4 Consequently we didn't have these long speeches by
5 Intervenors who were in here by virtue of being allowed to
6 come along as the Intervenors, and not to interfere in the
7 suit.

8 But I would like to request that the Court consider,
9 when we have these hearings, that we put a time line for that
10 side and this side. Otherwise we -- we're usually very
11 short, anyway, and it seems like we're outweighed.

12 Certainly we're outweighed tonight at least starting
13 out. Our position as stated in our motion, which will be
14 explained by Mr. Boies, is succinctly stated by the Supreme
15 Court, we think, which says, "Time is of the essence," Even
16 in this hearing. The circuit Court shall commence the
17 tabulation of the Miami-Dade ballots immediately which they
18 described above as the 9,000 undervotes which are segregated.

19 And the Circuit Court is authorized in accordance with
20 the provisions of 168, which he will refer to, to be assisted
21 by the Leon County Supervisor of Elections, or its sworn
22 designee, which means you may employ others.

23 And, moreover, since time is of the essence, in any
24 statewide relief, the Court must consider any further
25 statewide relief that should be ordered simultaneously with

1 the Miami recount.

2 And so what we say, and Mr. Boies will answer some of
3 the things, is that it should begin immediately, as we said,
4 and go forth. And we had suggestions as how that would be
5 done.

6 MR. BOIES: May it please the Court, my name is
7 David Boies, and I begin by expressing my appreciation and
8 I'm sure all of the parties' appreciation for sitting this
9 evening. This is something that is obviously very important
10 to us to be expedited.

11 In terms of what we would like to see the Court do,
12 basically, what we would like to see the Court do is what the
13 Florida Supreme Court has set out in its opinion.

14 First, there are 9,000 Miami-Dade County ballots that
15 have not been manually reviewed, and those are the ballots
16 that the Florida Supreme Court says should be reviewed
17 immediately here. And they have set out a procedure that
18 they've authorized the Court to use, not instructed the Court
19 to use, but authorized the Court to use, in terms of using
20 the supervisor of elections and that person's sworn
21 designees.

22 The second thing that we would like the Court to do is
23 to commence the manual recount for counties, other than
24 Miami-Dade County, that have not already had a manual
25 recount.

1 And I'm confronted a little bit with the Secretary of
2 State saying that it must be done by the Canvassing Boards,
3 and Governor Bush's lawyers saying: It can't be done by the
4 Canvassing Boards.

5 We believe that the Supreme Court has said that it can
6 be done by the Canvassing Boards. We believe it could also
7 be done here in Leon County, using the Leon County Supervisor
8 of Elections if the supervisor of elections had adequate
9 resources to do that. We don't know whether that's so or
10 not.

11 If there were adequate resources to do that, we would
12 have no objection to Governor Bush's suggestion. And we
13 believe that that would be entirely consistent with the
14 Supreme Court's opinion; that is, we disagree with the
15 Secretary of State that is somehow precluded. The Supreme
16 Court's opinion, in other portions, makes clear this is a
17 judicial function; that it is not a 166 protest. It is a 168
18 contest.

19 Not only the majority opinion, but two of the three
20 dissenting Justices draw that distinction between 166 and
21 168, and make clear that 168 is a judicial proceeding, and
22 not one where you have to give discretion to the Canvassing
23 Boards.

24 So if there is adequate resources to do it here, we
25 believe that that would be acceptable under the Supreme

1 Court's view. That's what Governor Bush's counsel has
2 suggested, and we would be agreeable to that, too. Our only
3 concern is whether or not there are adequate resources here
4 to get it done in the time available.

5 Let me make one point that is a little bit, maybe, of
6 an reargument of something the Supreme Court decided against
7 us, but they've been rearguing a lot on what the Supreme
8 Court decided against them.

9 THE COURT: Didn't they take my lead, though, when I
10 told him about it?

11 MR. BOIES: I did, Your Honor. And I'll only mention
12 this one thing, and that is -- and I'll do it, in part,
13 because the Intervenor suggested it, as well, and that is the
14 3,300 votes from Palm Beach. Those were ballots that the
15 Supreme Court said, we had not shown that the Palm Beach
16 board didn't do those right. No one ever looked at those as
17 a judicial matter.

18 And if we're going to go beyond the strictures of what
19 the Supreme Court has laid down, we think the very first
20 ballots -- and this may have been what the Intervenor had in
21 mind when he talked about the need to look at the Palm Beach
22 ballots.

23 The first ballots that ought to be looked at are those
24 3,300 ballots that are already here.

25 But we don't want to do anything until after everything

1 that the Supreme Court has ordered to be done has been done.

2 Once that's done, maybe there's some things that
3 they're suggesting that we could do. Maybe there's some
4 things that we're suggesting that could be done. But I think
5 the Supreme Court has made clear that there are certain
6 limited things that have to be done immediately, and those
7 are the things that we would ask the Court to focus on, at
8 least first.

9 In terms of when, we think the Court meant immediately
10 when it said, "Immediately."

11 Hours make a difference here. We would like to see the
12 process with respect to the 9,000 Miami-Dade ballots start
13 immediately. First thing tomorrow morning.

14 We would like to see the counties directed to start
15 first thing tomorrow morning. If the counties are going to
16 do it, or if it's going to be done here, that they be
17 instructed first thing tomorrow morning to get the ballots
18 here so they could be done here.

19 We think that hours are going to make a difference
20 here. And the Court knows, I think, may know, that
21 Palm Beach was shut out of the certification process because
22 it finished its manual recount 127 minutes late.

23 Minutes may make a difference here. So we don't want
24 to have any delay.

25 Let me just talk, in response to some of the individual

1 points that were made.

2 First, there was a question of what undervote meant.

3 The Court, the Supreme Court does use the term
4 undervote and nonvote or no vote. I think it is clear from
5 the context that all of those words are being used in the
6 same sense; that is, a ballot for which there was no vote
7 recorded for the presidential race.

8 There are overvotes where there are two or more votes
9 recorded for the presidential race.

10 That's not what the Supreme Court was talking about.
11 And, indeed, when you look at the use of the word, nonvote,
12 or no vote, the Supreme Court uses that in the context of the
13 9,000 Miami-Dade votes.

14 And there's no dispute that the 9,000 Miami-Dade votes
15 are undervotes.

16 So we think that what is at issue here are undervotes.

17 If somebody wanted to look at overvotes at sometime if
18 there was time, I'm not sure we would have an objection to
19 that.

20 But what we absolutely would object to is anything to
21 do with overvotes, or any other votes, until we get what the
22 Florida Supreme Court has ordered to be done, which is a
23 review of all the undervotes.

24 The number that was given to the Court of about 64,000
25 undervotes may be somewhat high, because I think that number

1 may include undervotes from Broward County and
2 Palm Beach County, which, of course, are two of the three
3 largest counties with undervotes.

4 And those votes have already been taken care of by the
5 Supreme Court.

6 In terms of the criteria to be used, we think the
7 Supreme Court's opinion is quite clear. They talk about the
8 clear intent of the voter, and we believe, that's always been
9 the appropriate standard in Florida. Judge Labarga in
10 Palm Beach County, issued two opinions on that.

11 And those were opinions that we had thought previously
12 from what the Defendants had said, were opinions that they
13 agreed with.

14 Those opinions make clear that it is not a
15 punch-through standard, it is not a hanging chad standard.
16 It is the intent of the voter, looking at the entire ballot.

17 We think that if you look at the cases the Supreme
18 Court cites in its opinion, in its opinion, the Florida
19 Supreme Court says, "There are a number of other states that
20 follow the same principle," and they give three examples,
21 Massachusetts, South Dakota, and Illinois.

22 And if you look at those three cases, and you look at
23 what the Supreme Court of Florida says about those cases, I
24 think you also get a sense of what the appropriate criteria
25 is to use to identify the clear intent of the voter. For

1 example, the South Dakota case, the Duffy case that the
2 Supreme Court cites in its opinion today, is a case that the
3 Florida Supreme Court characterizes as holding that if you
4 see a mark of some kind where a voter would ordinarily make a
5 mark in order to vote, then, unless there's something that
6 clearly indicates that that's not a vote, it should be
7 considered a vote.

8 The Dellahunt case, which is a Massachusetts case that
9 the Florida Supreme Court also cites in that same paragraph,
10 is a case that holds that where you have an indentation on or
11 near the chad, that should be counted as a vote.

12 The Pullen case, which is the third case, this is an
13 Illinois case that the Court cites there, although it doesn't
14 quote the Pullen case in this opinion, it did quote
15 extensively from the Pullen case in its November 21 opinion,
16 also talks about looking for what the reasonable
17 interpretation of what the voter's intent was from the entire
18 ballot.

19 So I think that the Supreme Court has made it clear,
20 not only what the standard is, but what, if you need to be
21 specific about particular criteria, what those criteria are.

22 So we think that that is something that does not need
23 to delay the process.

24 We don't have an objection to them presenting to the
25 Court summaries of evidence. We can present summaries of

1 evidence, too. It will not surprise the Court that there are
2 some pieces of evidence that Mr. Beck did not mention that we
3 think are important for the Court to consider.

4 But fundamentally, the Supreme Court of Florida has
5 decided these questions. It has decided that there is go to
6 be a manual recount. It has decided that that is not going
7 to include all of the 6,000,000 ballots. It's only going to
8 include the undervotes.

9 It's decided that those counts need to start now. It's
10 decided that those are going to be done as a judicial matter,
11 except to the extent that there are ballots in other counties
12 that can be done there, or can be done here.

13 So I guess the bottom line, because we think the
14 opinion is pretty clear, and we just think that it needs to
15 be implemented as quickly as the Court is prepared to do
16 that.

17 THE COURT: Well, in terms of who is going to do it,
18 you say you don't care whether it's done by somebody up here,
19 or the Canvassing Board, or the supervisor of elections down
20 in the counties?

21 MR. BOIES: That's true, Your Honor. The only
22 qualification is if, in consultation with the Supervisor of
23 Elections of Leon County, the Court were to conclude that the
24 resources here were not sufficient to do it, or it would -- I
25 don't think this could possibly be the case, but if for some

1 reason we couldn't get the ballots up here; that is, if there
2 was any practical consideration that meant that bringing the
3 ballots here would make it unlikely that we were going to get
4 it done, then we would say: Get it done in the counties.

5 And I think that's what was motivating the Florida
6 Supreme Court. I don't think the Florida Supreme Court was
7 saying: It has to be done in the counties, because elsewhere
8 in the opinion, they make clear this is a question for
9 judicial resolution.

10 But if we could get them here and get them done here on
11 time -- and I think the number is such that you probably
12 could, because I think the 54,000 number is too high.

13 And if the number were closer to 40,000, which is what
14 I think it is, I think that is something that could be done
15 in a period of time, if you had enough teams.

16 I guess the only other thing I would say is obviously,
17 we don't have any objection to having observers. In the
18 Supreme Court's Bechstrom's case, what happened there was
19 that the Circuit Court had the Clerk of the Court review the
20 ballots with a representative of each side present.

21 THE COURT: Clerk of the Court?

22 MR. BOIES: In that case, that was the Clerk of the
23 Court. That was the 1998 Bechstrom court case.

24 THE COURT: Two observers?

25 MR. BOIES: One observer from each side watching it.

1 The only thing that we would ask is that the process not get
2 booked down. The Court is well aware, with lawyers, you can
3 make every ballot a federal case, to coin a phrase.

4 And I think that there are enough federal cases already
5 in this matter. And what we need to do is we need to get on
6 with the counting process.

7 All we really want is for the count to start soon, and
8 to progress, so that we can fulfill what the Supreme Court
9 has said, which is to get it done on time.

10 We think that if the counting is going to go down in
11 some of the counties, they need to report by tomorrow at the
12 end of the day, what their schedule is for completion, and
13 how much they've gotten done. Many counties ought to be
14 finished tomorrow. And we think that the Court can't wait
15 until Monday to get reports.

16 I think the Court is going to have get reports on a
17 daily basis to make sure there is not some problem that we
18 don't know about that is too late, and we can't solve it.

19 MR. KLOCK: Your Honor, if I can address a couple
20 points, very quickly. First, Palm Beach County, Mr. Boies
21 referred to as being 127 minutes late. Currently they are
22 17,500 minutes late because they still have not filed a
23 certificate indicating what the additional votes are that
24 were due at five o'clock on the 26th.

25 The next point, Your Honor, is for those of us that are

1 local lawyers, generally speaking the stuff that is closer to
2 the end of the order is more significant. And I would
3 suggest that while Mr. Boies thinks the Supreme Court is sort
4 of suggesting you can do it any way you want, I would refer
5 you to the language at the bottom of 38: "Moreover because
6 the venue of an action of an election contest covers more
7 than one county than Leon County, the Circuit Court has
8 jurisdiction to order the supervisor of elections and the
9 Canvassing Boards, as well as the necessary public officials
10 in all counties that have not conducted a manual recount or
11 tabulation of the undervotes in this election, to do so
12 forthwith. Said tabulation can take place in the individual
13 counties where the ballots are located. That is nine lines
14 before the "so ordered" language.

15 In addition to that, Mr. Boies has excellent recall.
16 He indicated to Your Honor, he says, "Because time is of the
17 essence, the Circuit Court, shall commence the tabulation of
18 the Miami-Dade ballots immediately. But if you move on
19 another sentence or two, it says, moreover, since time is
20 also of the essence in any statewide relief, the Circuit
21 Court must consider any statewide relief should also be
22 ordered forthwith and simultaneoulsy with the manual
23 tabulation of the Miami-Dade votes.

24 Two other points, Your Honor, the Florida Supreme
25 Court, in the last paragraph says that that is defined under

1 101.561(5) of the Florida Statutes.

2 And when you compare it to the opinion, a legal vote as
3 it is used there, is one that is decided by the Canvassing
4 Board.

5 So the little adjustment to the Supreme Court's
6 decision, is to go in and have the Court reexamine the 3,300
7 votes that were determined as illegal votes by the Palm Beach
8 County Canvassing Board, and recognizes at the beginning of
9 the Supreme Court's opinion, they are illegal votes forever,
10 Your Honor. So they can never be recounted.

11 And I think the only other point I wanted to mention is
12 with respect to overvotes and undervotes, you also have the
13 problem when you get into the optical scanning votes,
14 Your Honor. You simply can't do what they want to do with
15 the undervotes, because, Your Honor, when you get to the
16 optical scanning, sometimes what folks do is put an X in the
17 box, instead of a complete circle. Sometimes it reads;
18 sometimes it doesn't.

19 It clearly is as important a vote as a dimpled chad or
20 something that is caused by a fingernail rubbing across a
21 ballot, and clearly needs to be looked at. Sometimes, also,
22 Your Honor, they color in the little box, or the little
23 circle, rather, and they write the same name below it.

24 That is considered an overvote by the machine and not
25 counted as well. That needs to be looked at.

1 And then the final point I had, Your Honor, was that --
2 that may be it. But these points are very important to be
3 taken into consideration.

4 The final point is there needs to be time for appellate
5 review. And the idea of having daily tallies -- the purpose
6 of this drill, Your Honor, is to conduct a complete manual
7 recount. Not to create opportunities for press conferences,
8 two or three times a day to indicate how our guy is doing
9 depending on whether you start at the bottom or the top end
10 of the precincts.

11 So all this information has to be tallied at one time,
12 because, otherwise, what it's going to be is a public
13 spectacle which is going to be worse.

14 THE COURT: Let me ask you something, because the
15 Secretary, at least it appears, doesn't have a preference for
16 one side or the other. You're a Defendant because that's
17 your job, and you have to certify the results.

18 Would you have any problem with, in terms of the
19 logistics of getting results from the other counties, that
20 they do it as they normally would do, which is to send it to
21 your office?

22 MR. KLOCK: That would be nine. They know how to do
23 that and they do it. And, Your Honor, with respect to the
24 other arguments that are being made, under 97.012, the
25 Secretary also has the responsibility for the uniformity of

1 elections, and how they're conducted and that kind of thing.

2 So that is the reason why the other objection.

3 You're correct, Your Honor, the Secretary does not
4 have, as Secretary, a horse in the race. Nor does the
5 Attorney General.

6 MR.GREENBURG: Your Honor, if I may, this is Murray
7 Greenburg in Miami.

8 MR. DOUGLASS: That's what I was waiting on. It really
9 wasn't, but I wanted to suggest this --

10 MR.GREENBURG: If I may, you have the ballots and all
11 our elections --

12 THE COURT: Mr. Greenburg, can you wait a minute? I'll
13 certainly let you talk. But I got a couple of them standing
14 up there. I won't leave before I let you talk. Okay?

15 MR. BECK: Your Honor, I'd like to address a couple of
16 points Mr. Boies raised.

17 THE COURT: Just one second, I think he's got a
18 procedural point.

19 MR. DOUGLASS: I would suggest, again, we be a little
20 more formal, because we made a presentation, they made a
21 long, long, presentation. We made a presentation. And that,
22 normally, in most proceedings, then the Court takes over and
23 asks questions.

24 We don't want to get into this, again, because Mr. Beck
25 is one of the longest speakers I know, and I would like to

1 ask that -- and he's from Illinois and they do things
2 different there. But I would like to ask the Court to,
3 please, if we could set some structure that would prevent
4 this, where we finish, and they get up, again, because -- if
5 it's just a little thing like the Secretary, he had a point
6 there.

7 But, you know, we're going to be here forever. So I'm
8 asking the Court, if we could, consider that, certainly, in
9 future hearings.

10 THE COURT: Well, I can consider it right now,
11 actually, because it is almost ten o'clock now, and I need to
12 do something, otherwise we will be talking about what we're
13 ease going to be doing forever.

14 MR. BECK: Your Honor, what they did in their
15 presentation --

16 THE COURT: Let me stop you, Mr. Beck. I don't want I
17 to argue back and forth and objecting. What I wanted is
18 input. And if you don't have any more input for me, that's
19 fine. But if you have something that you should tell me I'm
20 going to do, I will listen.

21 MR. BECK: I do, Your Honor. I first want to reinforce
22 what the Secretary of State's counsel said, that we also are
23 concerned about running tallies and press conferences. As
24 far as we're concerned, there is no number that comes out of
25 these things until the Court resolves any disputes as to

1 ballots.

2 And the Court ought to be releasing the information
3 when it's done with its work, rather than having running
4 voting tallies. So that as soon as, you know, one candidate
5 gets in front of another, all of a sudden people are claiming
6 victory. We ought to have the Court resolve the disputes and
7 then release the results.

8 Another item that is also on your plate is you're going
9 to need to hear from us both tomorrow, I would suggest, about
10 how many there are down in Palm Beach.

11 Mr. Boies as used the number 215, which the Supreme
12 Court used, but the Supreme Court also noted in a footnote,
13 that we say it's a lower number, and that they take no
14 positions on that. You're going to have to resolve that.

15 Your Honor, the Supreme Court says on page 39, when
16 talking about Miami-Dade, about the counting machine
17 registered these as nonvotes and they've never been manually
18 reviewed. We think you have to look at all the nonvotes, not
19 just the subset of undervotes.

20 Mr. Boies argued the South Dakota case as if that meant
21 that any kind of dimple or indentation is an indication of
22 intent.

23 I have the South Dakota case. What they say about --
24 they talk about two chads in the South Dakota case. And one
25 of them was good old chad number 88, and they say, " Two of

1 the four corners of this chad had been broken and one side is
2 separated." So that's a hanging chad. The other chad was a
3 patterned chad, where they say, "It's important to note that
4 when this ballot is viewed in its entirety, at least four
5 additional chads are partially punched in the same manner."

6 So the only chads that were at issue in the South
7 Dakota case that the Supreme Court referred to, were either
8 hanging chads, or the kind of patterns that we talked about,
9 not the kind of rogue dimples that they want.

10 Judge, in terms of the stages of a recount, and I don't
11 want to bore you with the gory details. I suggest we present
12 you with something in writing about the stages that people go
13 through in a recount.

14 We think, briefly, that the counties ought to cull the
15 nonvotes out from the other ballots, preserving the integrity
16 of the counts, the way I referred to before.

17 We think that the Court should announce what factors
18 are to be examined when determining voter intent, the
19 criteria that are relevant to that determination.

20 THE COURT: I think you're summarizing your previous
21 argument. I've got to get going.

22 MR. BECK: Okay. The last point, Judge, is Mr. Boies
23 was absolutely wrong when he said three times that somehow
24 Governor Bush suggested that the Leon County Supervisor of
25 Elections was the right person for doing the job.

1 We say the Court should do it. The Leon County
2 Supervisor of Elections -- I don't know him, and I'm sure
3 he's an honorable man and a good public servant, but he's
4 also a loyal Democrat.

5 Democrats on the Canvassing Boards of Miami-Dade and
6 Broward County made the decision that turned hundreds of
7 nonvotes into votes for Al Gore. And now they're suggesting
8 that a Democrat in Leon County make the determination
9 concerning the Republican counties, and we don't think that's
10 right.

11 THE COURT: I think the Supreme Court is suggesting
12 that the supervisor of elections in the counties may assist
13 the Court in making the count. And I don't think the
14 Democrats are suggesting anything.

15 MR. BECK: I'm suggesting to the Court that it's the
16 Court's decision to make. It was authorized to do that by
17 the Supreme Court. We think it's a bad idea. We don't think
18 that if the concern is with public confidence and the
19 integrity of the election, you should do that.

20 THE COURT: Let me ask all sides on this. The other
21 counties, theoretically, as per the order, would have the
22 Canvassing Board doing the counting, like they normally
23 would, or somebody down there in the counties. What if the
24 ballots were taken to Dade County, and a similar procedure
25 was used there and then report back just like they normally

1 would? Any reason why it has to be done here?

2 MR. BECK: You said Dade County?

3 THE COURT: Yes. I'm suggesting to you --

4 MR. DOUGLASS: I understand.

5 THE COURT: Is there any reason why we couldn't take
6 the Dade County ballots down to Miami, and let the people
7 that normally would count them, count them.

8 MR. BECK: I think on that one, the Supreme Court was
9 fairly clear. I thought the Supreme Court directed the Court
10 to undertake that task. I think it left open to the Court to
11 undertake the rest of the task, but that one, specifically,
12 was directed to the Court to do it.

13 THE COURT: Well, yes. But, theoretically, they asked
14 me to use the supervisor of elections here, or sworn
15 designee. Is there any reason why that couldn't be the
16 Dade County folks?

17 MR. BECK: We would object to that. We think the Court
18 ought to be doing that, under the standards articulated by
19 the Court we don't think that's contemplated by the Court's
20 order.

21 THE COURT: Anyone else?

22 MR. BOIES: Just very briefly, Your Honor. I think we
23 would agree that the Miami-Dade ballots ought to stay here.
24 Our reasons are a little different, but I think the time
25 consumed in sending that number of ballots back down, and

1 then getting the results back, would defeat the purpose of
2 the immediate review.

3 THE COURT: Okay.

4 MR. BOIES: With respect to Mr. Klock's point in which
5 he said that that, in reference to these ballots being
6 reviewed in the counties, nine lines from the end, it is nine
7 lines from the end, about, maybe a little more, but in those
8 nine lines is where the Supreme Court talks about the Court
9 having the assistance of the supervisor of elections.

10 So I think you could use the supervisor of elections,
11 if the adequate resources were there.

12 And, third, with respect to the criteria to be used, it
13 seems to me, if you're looking at the Duffy case, which is
14 South Dakota case, the right thing to look at is how the
15 Florida Supreme Court characterized that whole thing.

16 THE COURT: Mr. Greenburg, it's your turn. Do you want
17 to say anything.

18 MR. GREENBURG: Yeah, but, Judge, let me just say this
19 at this point: We will do whatever the Court wants. We're
20 here to assist the Court, the supervisor, and all the
21 officials here in the county.

22 What we need to know -- and I think Your Honor will
23 agree with this -- we need to know soon. Our ballots are
24 there; we're here; we're fine with that.

25 (LAUGHTER.)

1 MR.GREENBURG: The next plane would require our getting
2 up at 4:30 in the morning, which is fine. But we need to
3 know what you want to do, who you need up there.

4 And if it's just going to be legal argument, what time
5 you would want anybody, we will do whatever you want. You've
6 heard enough from all the lawyers, myself included. Just
7 please tell us what you want us to do and we'll do it.

8 THE COURT: Thank you. I'm going to take a recess and
9 consult the high authorities and be back with you -- I won't
10 tell you when, but I'll be back before the evening.

11 And I'm sorry to make you wait, and I know everybody
12 has been working overtime, but I'll have to come up with
13 something, having had input from you, that I think will work.

14 I'll be back to tell you what I think it is.

15 *(DISCUSSION OFF THE RECORD.)*

16 **RULING BY THE COURT**

17 THE COURT: I apologize for keeping you all waiting. I
18 know it's late.

19 Well, we've got two different counts to be concerned
20 with. One is the Dade County ballots that are here in
21 Leon County. The other involves the rest of the counties in
22 the state. This is not perfect, but I'm going to give you
23 what I plan to do with regard to both of those counts. You
24 may have objections to that. You may have questions about
25 it. But because of the lateness of the hour, and the exigent

1 circumstances, I ask that you make your objections in writing
2 and give them to me tomorrow morning through the Court
3 Administrator's Office. And I'll take some action on that
4 and review them at that time.

5 First of all, when we do the count, what we're going to
6 be looking at are what are considered nonvotes or undervotes.

7 Those would be where a counting machine does not
8 register the vote, or does not register all the vote.

9 For the Dade County vote, which is still here in
10 Leon County, we will keep the ballots here and count them
11 here.

12 I'm going to ask the supervisor of elections, or his
13 sworn designee, I'm going to ask that Mr. Sancho contact
14 Mr. David Leahy. Do we still have Mr. Greenburg?

15 I guess that was a long time for him to wait on the
16 phone.

17 I believe he was the attorney indicating they'd be
18 willing to help any way they can. The staff of the Clerk of
19 the Court is available for the purposes of helping in the
20 count, the Supervisor of Elections can work with the
21 supervisor in Dade County to the help count those votes.

22 I'm very concerned with the perception of these votes,
23 and whether they're going to be done accurately and fairly.

24 In that respect, I've asked my colleagues here in the Second
25 Circuit to assist in this.

1 Theoretically, I guess we've had counts normally with
2 teams of two. Normally there's a Canvassing Board there that
3 would resolve any questions about whether a vote is or is not
4 a vote. That's the way I understand this goes. For those
5 teams of two, I have asked two judges to act as arbiters,
6 basically, if there's a question about that, and those judges
7 can resolve that dispute or question about the ballot.

8 If those two Judges can't agree, it will be sent to me
9 and I'll resolve that finally. That's how we'll do the vote
10 here.

11 I'm going to have them start tomorrow morning at
12 eight o'clock.

13 And I believe the facility will be the Leon County
14 Public Library. They'll have some room there to accomplish
15 that.

16 The press will be allowed. We'll make arrangements.
17 Any questions about how to do that should run through the
18 proper administrator's office. The counting that's done
19 there will be open for observation by the parties.

20 But what I'd like to do, even though this has been said
21 in many Court cases so far, the voters are the real party in
22 interest. There are two candidates here, that would be
23 Governor Bush and Vice President Gore.

24 You can have anybody you want designated for a team.
25 But all the rest of you, I'm sorry, I'm just going to leave

1 it that way. If you can get them to let you there, you can
2 be an observer, as well.

3 If we start at eight, my target date -- not my final
4 date -- but I hope to be finished no later than two o'clock
5 p.m. on Sunday, which would be December the 10th.

6 As we discussed before, the Secretary of State, and the
7 Divisions of Elections will assist.

8 It won't be necessary for ours here, but I'd rather go
9 ahead and probably use that in terms of sending the results
10 that we have here, through the Supervisor of Elections to the
11 Division of Elections for a certification of those results.

12 At -- and I want to emphasize: This is not a protest
13 count of votes. This is a count of votes as a result of a
14 contest of an election, under which there is broad powers,
15 apparently, for the trial judge to fashion a remedy.

16 So when I say there will be observers at the county,
17 there won't be as you would normally have in a protest, the
18 opportunity to make an objection to each ballot, to mark it,
19 to see it.

20 You'll be able to observe. You can make a note on a
21 notepad, if you'd like. You can raise those objections later
22 in writing with me. But in terms of each individual ballot,
23 I want the county to go as smoothly as possible. As I've
24 indicated, there will be at least two other judges available
25 to arbitrate any questions there. But I don't want anybody

1 raising a vocal objection at the time of the voting, or
2 otherwise trying to disrupt the count in any way.

3 Now, for the other counties, just as the Supreme Court
4 has indicated in its order, I would respectfully direct
5 Canvassing Boards in the counties who have not, or have not
6 previously done a manual count of nonvotes or undervotes, to
7 take steps immediately to do so. Specifically, I would
8 request that, by twelve o'clock p.m. tomorrow, Saturday, fax
9 to the Office of the Court Administrator, which I do have
10 that number somewhere, the fax number. Do I have somebody
11 from the Court Administrator's office here? I sure don't
12 want to give out mine. (850) 487-7947.

13 What I'd like faxed there is some indication of the
14 protocol purported or proposed by the Canvassing Board. And
15 this could be the Canvassing Board, but not limited to the
16 Canvassing Board. But such other public officials, including
17 the Supervisor of Elections, and their offices, staff,
18 employees, whatever is necessary in their estimation to do
19 the count required by the Supreme Court with, again, a target
20 date of 2:00 p.m. on Sunday for those results to be sent from
21 there to the Division of Elections for certification.

22 The same procedure would apply in terms of the
23 observers, in terms of the objections, and the indications
24 that I had before as to the vote in Leon County.

25 I'm not going to direct exactly how to do that. I'm

1 going to leave that to the discretion of the Canvassing
2 Board, in terms of deciding the parameters of who would do
3 the counting and how they'll do it. To my colleagues around
4 the state, my judicial colleagues, I would request that you
5 offer your assistance in the same manner my colleagues here
6 in the Second Circuit have offered, for the reason I have
7 indicated, to give some objectivity and partiality to the
8 process itself, to reduce, to the extent possible any
9 objections to the manner in which it was conducted.

10 I'm not directing that or ordering that, but simply a
11 request. And I'll leave it to the Canvassing Boards to
12 decide how they will best do it. But they will report by
13 twelve o'clock the protocol they intend to use, the estimated
14 time schedule, and I'll review that at that time.

15 The standard to be applied in doing this count is the
16 standard that the Supreme Court has set forth in its recent
17 order.

18 The Supreme Court has twice been given the opportunity
19 and requested to get more specific criteria in terms of how
20 to count ballots manually. They've declined to do so. And I
21 see in that a clear indication that they wish to leave that
22 to the Canvassing Boards and the persons that do the manual
23 counting, guided only by that principle that's laid out in
24 the opinion.

25 I think I indicated, I would ask that the Canvassing

1 Boards in those counties, when they've completed their
2 counts, to forward that through the normal procedures to the
3 Division of Elections for certification.

4 And with that, I know you probably have questions and
5 objection. As I indicated before, if you'll put those down
6 in writing, I will do my best sometime tomorrow morning to
7 reduce this to writing. And if I could get a transcript,
8 that would help me. I would appreciate it. But I need
9 something in writing.

10 MR. BECK: We will put our objections in writing in the
11 morning. I just want to alert the Court that there was an
12 outstanding matter in front of Judge Sauls. We had made a
13 motion to exclude the Miami-Dade ballots on grounds of ex--

14 THE COURT: Mr. Beck, I just said, put all your
15 concerns in writing. I will not hear any thing more tonight.

16 MR. BECK: I'm concerned that the counting is going to
17 begin before the Court hears the evidence on whether the
18 ballots are in shape to be counted.

19 THE COURT: I understand. Any concerns you have, any
20 objections you have, put them in writing. I'll review them
21 in the morning. Put them through the Court Administrator's
22 office. I'll be in touch with the attorneys through the
23 Court Administrator's office. We may meet again, but that's
24 what I'm going to do. Thank you very much.

25 *(HEARING CONCLUDED AT 11:49 P.M.)*

HEARING before JUDGE CLARK, 12/8/00

CERTIFICATE OF REPORTERSTATE OF FLORIDA:
COUNTY OF LEON:I, **B. J. QUINN**, Certified Realtime Reporter,
Registered Professional Reporter, and Notary Public in and for the
State of Florida at Large:DO HEREBY CERTIFY that the foregoing
deposition was taken before me at the time and place therein
designated; that before testimony was taken, the witness was duly
sworn; that my shorthand notes were thereafter transcribed, via
computer, under my supervision, and the foregoing pages numbered
1, through , are a true and correct record of the aforesaid
proceedings.I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the parties, nor relative
or employee of such attorney or counsel, or financially interested
in the foregoing action.WITNESS MY HAND AND SEAL this, the day of
OCTOBER, A.D., 2000, IN THE CITY OF TALLAHASSEE, COUNTY
OF LEON, STATE OF FLORIDA.B. J. Quinn
MY COMMISSION # CC603438 EXPIRES
March 20, 2001
BONDED THRU TROY FAIR INSURANCE, INC.**B. J. QUINN, RPR, CCR, CMR**
Certified Realtime Reporter
519 East Park Avenue
Tallahassee, Florida 32301
(850)222-5508

My Commission Expires March 20, 2001

CERTIFICATE OF NOTARYSTATE OF FLORIDA:
COUNTY OF LEON:I, **B. J. QUINN**, Notary Public in and for the
State of Florida at Large, do hereby certify that the witness
personally appeared before me and was first duly sworn by me to
testify to the truth on the date and time indicated herein.B. J. Quinn
MY COMMISSION # CC603438
March 20, 2001
BONDED THRU TROY FAIR INSURANCE, INC.**B. J. QUINN, RPR, CCR, CMR**
Certified Realtime Reporter
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(850) 222-5508.**ASSOCIATED COURT REPORTERS - 1-800-222-5508**